



CANADA.

---

CORRESPONDENCE

ON THE SUBJECT OF THE

LAW OF COPYRIGHT IN CANADA.

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Presented to both Houses of Parliament by Command of Her Majesty.  
*June 27, 1895.*

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109	The Earl of Aberdeen.	June 5 (Rec. June 19.)	Reports that his Ministers have authorised Mr. E. L. Newcombe, the Deputy Minister of Justice, to proceed to London to discuss the copyright question with Her Majesty's Government.	121

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110	To the Society of Authors.	<b>1895.</b> June 20	In reply to the Society's letter of June 20th, assures them that their objections to the Canadian Act of 1889 will receive full consideration by Her Majesty's Government in their discussions with the Canadian delegate.	122
111	To the Earl of Aberdeen.	June 20	Transmits copies of Nos. 105 and 110 . - -	122
112	Do. - -	June 24 (Telegraphic.)	Observes that Mr. Newcombe had better not leave at once as discussion cannot conveniently take place until the new Imperial Government has completed its arrangements.	12

CORRESPONDENCE

ON THE SUBJECT OF THE

LAW OF COPYRIGHT IN CANADA.

No. 1.

52 VICTORIA, CHAP. 29.

AN ACT to amend "The Copyright Act," Chapter sixty-two of the Revised Statutes.  
[Assented to 2nd May 1889.]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. Sections four and five of "the Copyright Act" are hereby repealed and the following substituted therefor:—

"4. Any person domiciled in Canada or in any part of the British possessions, or any citizen of any country which has an international copyright treaty with the United Kingdom, in which Canada is included, who is the author of any book, map, chart or musical or literary composition, or of any original painting, drawing, statue, sculpture or photograph, or who invents, designs, etches, engraves or causes to be engraved, etched or made from his own design, any print or engraving, and the legal representatives of such person or citizen, shall have the sole and exclusive right and liberty of printing, reprinting, publishing, reproducing and vending such literary, scientific, musical or artistic works or compositions, in whole or in part, and of allowing translations to be printed or reprinted and sold of such literary works, from one language into other languages, for the term of twenty-eight years from the time of recording the copyright thereof in the manner and on the conditions, and subject to the restrictions herein-after set forth.

Sections 4 and 5 of R.S., c. 62, repealed; new sections. Who may obtain copyright.

Translations.

Term of copyright.

"5. The conditions for obtaining such copyright shall be that the said literary, scientific, musical or artistic work shall, before publication or production elsewhere, or simultaneously with the first publication or production thereof elsewhere, be registered in the office of the Minister of Agriculture, by the author or his legal representatives, and further that such work shall be printed and published or produced in Canada, or reprinted and republished or reproduced in Canada, within one month after publication or production elsewhere; but in no case shall the sole and exclusive right and privilege in Canada continue to exist after it has expired in the country of origin.

Conditions for obtaining copyright.

Proviso.

"2. No immoral, licentious, irreligious, or treasonable or seditious literary, scientific, or artistic work shall be the subject of such registration or copyright.

Exception.

"3. If any such copyright work has been reprinted previously to the coming into force of this Act, any person who has, previously to such date, imported any foreign reprints, may dispose of such reprints by sale or otherwise; but the burden of proof of establishing the extent and regularity of the transaction shall, in such case, be upon such person.

Reprints previously imported may be sold.

"4. In the case of any person who has contracted, previously to the coming into force of this Act, to supply any reprint of any work, either in its complete state or by serial numbers, of which work copyright has been obtained either in the United Kingdom or any such country as aforesaid, but not in Canada, such person shall be entitled to complete such contract, and, subject to the provisions of the Acts respecting duties of Customs, to import the same; but the burden of proof of establishing the extent and regularity of the transaction shall, in such case, be upon such person."

Previous contract for supplying reprint may be fulfilled.

2. Section six of the said Act is hereby repealed.

Section 6 repealed.

License, if  
no copyright  
is taken out.

3. If the person entitled to copyright under the said Act as hereby amended fails to take advantage of its provisions, any person or persons domiciled in Canada may obtain from the Minister of Agriculture a license or licenses to print and publish or to produce the work for which copyright, but for such neglect or failure, might have been obtained ; but no such license shall convey exclusive rights to print and publish or produce any work.

No exclusive  
right.

Royalty to  
be paid.

2. A license shall be granted to any applicant agreeing to pay the author or his legal representatives a royalty of ten per centum on the retail price of each copy or reproduction issued of the work which is the subject of the license and giving security for such payment to the satisfaction of the Minister.

How col-  
lected and  
paid.

4. The royalty provided for in the next preceding section shall be collected by the officers of the Department of Inland Revenue, and paid over to the persons entitled thereto, under regulations approved by the Governor in Council, but the Government shall not be liable to account for any such royalty not actually collected.

Importation;  
from foreign  
countries  
may be pro-  
hibited.

5. Whenever under the foregoing provision of this Act a license has been issued permitting the printing and publishing or the producing of any work, and evidence has been adduced to the satisfaction of the Governor in Council that such work is in course of being printed and published or produced in such manner as to meet the demand therefor in Canada, the Governor General may, by proclamation published in the "Canada Gazette," prohibit the importation, while the author's copyright or that of his assigns is in force, subject to the provisions herein-after contained, of any copies of reproductions of the work to which such license relates ; but if at any time thereafter it is made to appear to the Governor in Council that such work is not, under such license, printed and published or produced in such manner as to meet such demand, the Governor General may, by proclamation published as aforesaid, revoke such prohibition.

If work is  
not pub-  
lished under  
license so as  
to meet de-  
mand.

No prohibi-  
tion of im-  
portation  
from United  
Kingdom.

6. Nothing in this Act contained shall be deemed to prohibit the importation from the United Kingdom of copies of works of which the copyright is there existing and which are lawfully printed and published there, nor shall anything in this Act contained be deemed to apply to any work for which copyright has been obtained in the United Kingdom or in any such country as aforesaid before the coming into force of this Act ; but the law in force at the time of the coming into force hereof shall be deemed to be still in force as respects such works.

Commence-  
ment of Act.

7. The foregoing provisions of this Act shall come into force on a day to be named by proclamation of the Governor General.

No. 2.

LORD STANLEY OF PRESTON to LORD KNUTSFORD.  
(Received September 2, 1889.)

MY LORD,

The Citadel, Quebec, August 16, 1889.

I HAVE the honour to forward, herewith, a copy of an approved Report of a Committee of the Privy Council concurring in a recommendation of the Minister of Agriculture, that in virtue of the reservation contained in Article I. of the Proces-Verbal of signature, Her Majesty's Government may be moved to announce the denunciation by Canada, for the reasons specified by the Minister, of the Convention concerning the creation of an International Union for the Protection of literary and artistic works, signed at Berne, September 9th, 1886, and further, under the authority of Section 9 of the Imperial International Copyright Act, 1886, to pass an Order in Council to declare that the Berne Convention shall not be held to apply to the Dominion after the termination of one year from the date of such declaration.

I have, &c.

STANLEY OF PRESTON.



## Enclosure in No. 2.

CERTIFIED COPY of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the GOVERNOR-GENERAL IN COUNCIL, on the 11th August 1889.

On a memorandum dated 27th July 1889, from the Minister of Agriculture; recommending in respect to the Convention concerning the creation of an international union for the protection of literary and artistic works commonly known as the Berne Convention, in virtue of the reservation contained in Article 1, of the Procès-Verbal of signature, that Her Majesty's Government be moved to announce the denunciation of such Convention by the Dominion of Canada for the following reasons:—

- A. That its provisions do not accord with those of the Canadian Copyright Act, passed at the last session of Parliament.
- B. That it is not in accordance with the requirements of Canada.
- C. That it is a limitation of the privileges to Canadian publishers conferred by the Canadian Copyright Act of 1875, approved by Imperial legislation.

The Minister states that under the existing Canadian law, sanctioned as stated by Imperial legislation, copyright is granted in Canada on the condition of printing in Canada, to any subject or citizen of any country which has an international copyright treaty with the United Kingdom.

It therefore follows that, in so far as relates to the principal consideration, the securing of copyright, the authors of all the countries parties to the Berne Convention can easily obtain it in Canada.

The Minister further recommends that Her Majesty's Government in virtue of the authority granted by Section 9 of the Imperial International Copyright Act, 1886, be moved to pass an Order in Council to declare that the Berne Convention shall not be held to apply to the Dominion of Canada after the termination of one year from the date of such declaration in accordance with the provisions of Article 20 of such Convention.

The Committee concur in the foregoing recommendations and advise that your Excellency be moved to transmit a copy of this minute to the Right Honourable the Secretary of State for the Colonies for action as herein requested.

JOHN J. MCGEE,  
Clerk, Privy Council.

## No. 3.

LORD STANLEY OF PRESTON to LORD KNUTSFORD.

(Received September 7, 1889.)

MY LORD, The Citadel, Quebec, August 26, 1889.

I HAVE the honour to transmit to your Lordship a copy of an approved Minute of the Privy Council submitting a report of the Minister of Justice with reference to the Act\* of the last Session of the Dominion Parliament to amend the Copyright Act (Chapter 62, Revised Statutes of Canada).

I have, &c.

STANLEY OF PRESTON.

## Enclosure in No. 3.

CERTIFIED COPY of a Report of a Committee of the Honourable the Privy Council, approved by his Excellency the GOVERNOR-GENERAL IN COUNCIL, on August 17, 1889.

The Committee of the Privy Council have had under consideration a report dated August 3rd, 1889, from the Minister of Justice with reference to the Act of the last

Session of the Parliament of Canada to amend the Copyright Act (Chapter 62, Revised Statutes of Canada).

The Committee concur in the said report (annexed) and advise that your Excellency be moved to forward a copy hercof to the Right Honourable the Secretary of State for the Colonies.

All which is respectfully submitted for your Excellency's approval.

JOHN J. MCGEE,  
Clerk, Privy Council.

To his Excellency the GOVERNOR-GENERAL IN COUNCIL.

1. In reporting to your Excellency that the Act passed at the last Session of the Parliament of Canada, entitled, "An Act to amend the Copyright Act," (Chapter 62, Revised Statutes) might properly receive your Excellency's assent, the undersigned intimated that the Act would be made the subject of a more extended report, and he now respectfully presents to your Excellency the following observations in pursuance of that intimation :—
2. The Act contains a provision that it shall not come into force until proclaimed by your Excellency, and there was not, and is not, any intention on the part of your Excellency's Government, to advise the issue of a proclamation bringing it, into force until it has been submitted to Her Majesty's Government, with the explanations which your Excellency's advisers can present, and until Her Majesty's Government shall concur in the issue of the proclamation.
3. The concurrence of Her Majesty's Government has been considered necessary because the Act deals with a subject on which Imperial legislation extending to all Her Majesty's possessions now exists, and in respect to which it is not desired by your Excellency's Government that a measure should be adopted which would conflict with the policy which Her Majesty's Government has hitherto pursued excepting in so far as the important interests involved in Canada urgently require, and excepting from a date before which any necessary preliminary arrangements can be concluded in order to prevent confusion and surprise. Moreover, the fact that the Imperial legislation adopting the Berne Convention on the subject of Copyright extends to all Her Majesty's possessions (and must continue to extend to Canada until the expiration of a year from notice of denunciation), makes it necessary that, before the proclamation should be issued, Her Majesty's Government should be asked to give the notice of denunciation on behalf of Canada, and that a year's delay should elapse after that notice, and that before the Act of last Session can be given effect to an Order of Her Majesty's in Council be obtained releasing Canada from the operation of the Statute which makes the Berne Convention operative throughout the Empire. The request on the part of the Government of Canada for the notice of denunciation of the Berne Convention has already been, or is now about to be, transmitted, and the duty of the undersigned is, therefore, limited to an explanation of the reasons which induced the adoption of the Act of last session, and a statement of the principles on which such legislation can, in his view, be sustained.
4. For reasons which will not be dilated on at length in this report, the copyright system heretofore in force (under Imperial and Canadian legislation) has been found to be most unsuitable to Canada and the Berne Convention is found to increase the causes of complaint which previously existed.
5. The copyright law in force in Canada (of which the Act of last session was an amendment) irrespective of the International Copyright Act of 1886, which gives effect to the Berne Convention, consists, as has been intimated, partly of Imperial and partly of Canadian legislation.
6. Under it every work copyrighted in Great Britain had copyright protection without the requirement of publication in Canada. Under the protection of this system United States authors secure copyright in Great Britain and her possessions by publishing in England (sometimes by publishing a limited edition, not intended to supply the market and not sufficient therefore), and thus secure control of the Canadian market, while a Canadian cannot obtain such copyright privileges in the United States.
7. The rights which British authors and publishers have in British possessions under this condition of the law have been greatly abused by the sale of their copyright privileges to American publishers, and their refusal to sell to Canadian publishers on like terms. By this means United States publishers have been enabled to command the Canadian market under the provisions of legislation which were not intended for their benefit, but for the benefit of the British author and publisher. The prices of American reprints are

so low that the British publications have no chance of competing with them in Canada, and Canadian reprints being prohibited by the copyright law, the business of reprinting for Canadian readers is thus, to a great extent, thrown into the hands of American publishing houses, to the very great detriment of the publishing interests of Canada.

8. By the legislation of last session it is proposed that the persons having copyright under Imperial legislation or under any treaty arrangement with Great Britain may preserve the exclusive right as to Canada by publishing or republishing in this country within a certain time, and that if he does not so publish or republish his copyright shall still avail him to the extent of enabling him to collect a royalty on all republications made in Canada by any other person.

9. The evils before mentioned which have occasioned complaint will be augmented by the provisions of the Berne Convention, which extends the copyright privileges without publication in British possessions to authors of any country which has joined, or may join, the Copyright Union formed by that Convention.

10. For the benefit conferred on Canadian authors (who are comparatively a very limited class) of copyright in the countries comprised in the Berne Convention Union the business of publishing in Canada will be repressed as to works published in all these countries, and the United States publishers will be free from any restrictions of that kind, not only as to the vast markets of their own country, but as to Canada as well.

11. Parliament considered that the peculiar position in which Canada is placed on account of her proximity to the United States, and the copyright policy of the United States, demand peculiar treatment in legislation on this subject, and treatment different from both the Berne Convention and from the Imperial and Canadian Copyright Acts heretofore in force. The Canadian Parliament has on more than one occasion expressed this opinion, and did so emphatically at its last session by unanimously passing the Act now under consideration.

12. If it should seem to Her Majesty's Government that further explanations are needed to convince them of the expediency of the proposed change, or of the necessity of the Act of last session being allowed to go into operation, he trusts that a further opportunity will be afforded of making those explanations, as abundant material exists therefor in the experience of all who are interested in the publishing business in Canada.

13. The undersigned submits that the royalty provision of the Act of last session in favour of the holder of the British copyright is reasonable, and affords ample facilities for collection. The Government of Canada will be prepared to submit to Her Majesty's Government the regulations which may be adopted under the Act for securing the collection of the royalty and the payment thereof to the proper parties.

14. It only remains for the undersigned to observe, as regards the policy of permitting republication in Canada in consideration of such a royalty in favour of the holders of the copyright out of Canada, that under existing legislation the importation of foreign reprints into Canada is permitted on the imposition of a Customs duty in favour of the copyright holder.

15. The Act of last session will make the same provision in favour of the Canadian publisher, but under regulations which will restrain the influx of foreign reprints and afford a better means of collecting the compensation to the copyright holder.

16. The undersigned has reason to apprehend that a question may be raised as to the power of the Parliament of Canada to pass the Act in question, because he is aware that previous legislation on this subject has been stated to require the sanction of the Imperial Parliament, and because that view has been based on very eminent legal authority. On that subject he begs to present the following considerations.

17. The Act in question is understood not to conflict in any way with any Imperial legislation passed since the adoption of the British North America Act, 1867.

18. For that reason, as has been already intimated, no Proclamation will be issued bringing the Act into force until after the Imperial Copyright Act of 1886 giving effect the Berne Convention ceases to be applicable to Canada.

19. The remaining question, therefore, simply is as to the right of the Parliament of Canada under the British North America Act to make regulations in Canada regarding copyright in Canada, notwithstanding that these regulations may differ from those existing under Imperial legislation adopted prior to the British North America Act.

20. The view which the undersigned respectfully presents is, that, as regards all those subjects in respect of which powers were given to the Canadian Parliament by the British North American Act, the true construction of the British North America Act is that Parliament may properly legislate without any limitation of its competency, except-

ing the limitation which Her Majesty can always impose by disallowance (whether the Act be within the powers of Parliament or not), and excepting also as to control by Imperial legislation subsequent to the British North America Act and applicable to Canada. As to this latter it may be considered, in so far as it deals with the subjects given to the Parliament of Canada, as amendatory to the British North America Act.

21. One of the subjects over which power was given to the Parliament of Canada to legislate by the British North America Act was "copyright." See section 91.

22. When in 1872 the Parliament of Canada passed an Act respecting copyright in pursuance of this section of the British North America Act the Act was reserved for Royal Assent, and Lord Carnarvon in a Despatch, dated 15th June 1874, stated to the Earl of Dufferin, one of your Excellency's predecessors, that he had been unable to advise Her Majesty to assent to the Act, and that he had taken the advice of the Law Officers of the Crown on the subject.

23. Lord Carnarvon in that Despatch intimates that the 91st section of the British North America Act, above referred to, is to be interpreted by one of the headings which appear in the statute, namely, "Distribution of legislative powers," and he almost seems to incline to the opinion that the 91st section, on which all the power of the Parliament of Canada depends, is intended to withdraw the powers from the provincial Legislatures, and not to confer any substantial authority on the Parliament of Canada.

24. If that view would be correct, the British North America Act would simply have been a withdrawal from the Legislatures of the various provinces which were thereby united of a large portion of the authority which they had possessed ever since representative institutions were conferred upon them; and it is difficult to see that any authority is conferred upon the Parliament of Canada, or that that Parliament has now the powers which belong to the Parliaments of all other self-governing Colonies.

25. Lord Carnarvon, however, after making in effect the statement that the 91st section of the British North America Act is merely a part of a scheme for the distribution of legislative powers, and is not to be considered, as it always has been regarded and interpreted by the courts as well as by Her Majesty's Government, as the gift of legislative power to Canada, proceeds to say that the effect of the Imperial Act (British North America Act) is "to enable the Parliament of Canada to deal with Colonial copyrights within the Dominion," and "it is clear that it was not contemplated to interfere with the rights secured to authors by the Act of 5 and 6 Vict., or to override the provisions of that Act."

26. It may be said, in referring to this observation, that neither the Act of 1872 nor the Act of last Session did anything more than deal with colonial copyrights.

27. It is claimed that the British North America Act, section 91, gave the Parliament of Canada, power as full as that possessed by the Imperial Parliament to say who should, and who should not, have copyright within the Dominion; and, as regards the observation that it was not contemplated to interfere with the rights secured to authors by the Imperial Act, all objection under that head may be dispensed with because the Act of last Session will not affect any rights which have been secured before it shall come into operation.

28. The undersigned cannot advance the foregoing views without extreme deference, because he finds that Lord Carnarvon's Despatch intimates that in the opinion which his Lordship expresses he is supported by the Law Officers of the Crown, and also by those eminent lawyers the present Lord Selborne and the present Lord Herschell, whose report he laid before Parliament in 1872.

29. In the face of such eminent authorities he would hardly venture to press upon the attention of Her Majesty's Government the view of the Canadian Government which he has above presented if it were not to his mind perfectly plain that the people of Canada would hold him culpable if he failed to assert what was the only interpretation under which they received the Constitution and under which they were willing to be content with that Constitution.

30. If the 91st section of the British North America Act has not conferred on the Parliament of Canada all the powers of the Parliament of the United Kingdom in respect to the subjects there enumerated, the gift of powers made by that Act is delusive in respect to the Canadian Parliament, and is less than the gift of powers which the provincial Legislatures previously enjoyed regarding the same subjects.

31. The undersigned is encouraged to state this opinion not only because it has been supported by the Canadian Parliament, and because it agrees with the understanding of the Canadian people on the subject from the first, but because the same view has been upheld, he ventures to submit, by the Judicial Committee of Her Majesty's

Privy Council, on more than one occasion since the Despatch of Lord Carnarvon in 1874.

32. Before referring to the decisions of that tribunal, however, he would advert to the opinion presented to Lord Carnarvon in 1872 from the two Law Officers already named. In that opinion the view is stated that the powers of Parliament are exclusive only so far as relates to the Legislatures of the provinces of which Canada is composed. This view it is not intended to controvert.

33. It has never been claimed that the powers of the Parliament of Canada are exclusive of the powers of the Parliament of Great Britain, and nobody can doubt that the Parliament of Great Britain can at any time, limitations of good faith and national honour not being considered, repeal or amend the British North America Act or exercise, in relation to Canada, its legislative power over the subjects therein mentioned. Subject to the same limitations, Her Majesty's Government can, of course, disallow any Act of the Parliament of Canada.

34. It is respectfully submitted that the Canadian Parliament except as to the control which may be exercised by the Imperial Parliament by a statute subsequent to the British North America Act, and except as to the power of disallowance, possesses unlimited power over all the subjects mentioned in the 91st section, and that it is necessary that it should do so for the well-being of Canada, and for the enjoyment of self-government by its people.

35. In the case of *Hodge v. the Queen* (9 Appeal Cases, 117), decided by the Judicial Committee of the Privy Council in 1883, the following passage declares:—

“When the British North America Act enacted that there should be a Legislature for Ontario, and that its Legislative Assembly should have exclusive authority to make laws for the province and for provincial purposes in relation to the matters enumerated in section 92, it conferred not in any sense to be exercised by delegation from or as agents of the Imperial Parliament, but authority as plenary and as ample within the limits prescribed by section 92 as the Imperial Parliament in the plenitude of its power possessed and could bestow.

“Within these limits of subjects and area the local legislature is supreme and has the same authority as the Imperial Parliament or the Parliament of the Dominion would have had under like circumstances to confide to a municipal institution or body of its own creation authority to make byelaws or resolutions as to the subjects specified in the enactment, and with the object of carrying the enactment into operation and effect.”

36. In the case of *Harris v. Davies* (10 Appeal Cases, 279), the Judicial Committee of the Privy Council decided in 1885, that the Legislature of New South Wales under a charter not wider than the British North America Act had power to repeal a Statute of James (21 Jas I., c. 16, s. 6), and had impliedly done so by 11 Vict., c. 13, s. 1, of that Colony, which, according to its true construction, placed an action for words spoken upon the same footing as regards costs and other matters as an action for written slander.

37. In the case of *Powell v. Apollo Candle Committee [? Co.] (Limited)*, (10 Appeal Cases, 282), the Judicial Committee decided in the same year, that a Colonial Legislature within the area of its powers is unrestricted. The following passage from the judgment is pertinent to the present question:—

“Two cases have come before this Board in which the powers of Colonial Legislatures have been a good deal considered, but these cases are of too late a date to have been known to the Supreme Court when their judgment was delivered. The first was the case of *Reg. v. Burah* in which the question was whether the section of an Indian Act conferring upon the Lieutenant-Governor of Bengal the power to determine whether the Act, or any part of it, should be applied to a certain district, was, or was not, *ultra vires*. In the judgment of this Board, given by the Lord Chancellor, the legislation is declared to be *intra vires*, and the Lord Chancellor lays down the general law in these terms: ‘The Indian Legislature has powers expressly limited by the Act of the Imperial Parliament which created it, and it can, of course, do nothing beyond the limits which circumscribe these powers.’

“But when acting within those limits it is not in any sense an agent or delegate of the Imperial Parliament, but has, and was intended to have, plenary powers of legislation, as large, and of the same nature as those of Parliament itself. The same doctrine has been laid down in a later case of *Hodge v. The Queen* where the question arose whether the Legislature of Ontario had, or had not, the power of intrusting to a local authority, a Board of Commissioners, the power of enacting regulations with regard to their Liquor License Act of 1877, of creating offences for the breach of those regulations and

annexing penalties thereto. Their Lordships held that they had that power. It was argued then, as it has been argued to-day, that the local legislature is in the nature of an agent or delegate, and on the principle *delegatus non potest delegare*, the local Legislature must exercise all its functions itself, and can delegate or instruct none of them to other persons or parties.

"But the judgment, after reciting that such had been the contention, goes on to say: It appears to their Lordships, however, that the objection thus raised by the appellants is founded on an entire misconception of the true character and position of the provincial Legislature.

"They are in no sense delegates of, or acting under any mandate from, the Imperial Parliament. When the British North America Act enacted that there should be a Legislature for Ontario, and that its Legislative Assembly should have exclusive authority to make laws for the province and for provincial purposes in relation to the matters enumerated in section 92, it conferred powers, not in any sense to be exercised by delegation from, or as agents of, the Imperial Parliament, but authority as plenary, as ample, within the limits prescribed by section 92, as the Imperial Parliament in the plenitude of its power possessed or could bestow, within these limits of subjects and areas the local Legislature is supreme, and has the same authority as the Imperial Parliament."

38. The case of *Riel v. the Queen*, decided by the same tribunal in the same year, is likewise pertinent. There had been three Imperial statutes for the regulation of the trial of offences in Rupert's Land, since known as the North-West Territories of Canada.

39. The statutes of Canada made other provisions inconsistent with these statutes, and the conviction of the prisoner had taken place under the statutes of Canada. The Lords of the Judicial Committee declined to admit an appeal, entertaining no doubt as to the correctness of the conviction.

40. The opinion of Lord Carnarvon seems to have been based on a strict view taken of the Imperial statute known as "the validity of Colonial Laws Act" (28 & 29 Vic. c. 63), which declared that Colonial statutes should be void and inoperative if they should be repugnant to the provisions of any Act of Parliament extending to the Colonies, or repugnant to the provisions of any order or regulation made under the authority of such Act, and having in such Colony the force and effect of such Act.

41. There may be ground for argument that as the British North America Act was passed subsequently to this statute, it confers a constitution more liberal than those to which the statute applied.

42. Another view which may be urged is, that the repugnancy, in order to have the effect indicated, must exist in relation to some statute passed after the creation of the Legislature of a Colony. The statute does not seem, certainly, to have been construed by the judicial decision, in the manner indicated by Lord Carnarvon.

43. If the view which his Lordship takes is correct, it will be impossible for the Parliament of Canada to make laws in regard to any one of the 21 subjects which constitute the "area" of the Canadian Parliament (to adopt the phrase used in the decision of *Hodge v. the Queen* in relation to the Ontario Legislature) when such legislation is repugnant to any legislation which existed previously, applicable to these subjects, in the Colonies.

44. There undoubtedly did exist Imperial legislation as regards all those subjects in the Colonies, at a time long anterior to the gift of representative institutions, and it was never supposed to be necessary that Canada, or the provinces now constituting Canada before the Union, should obtain the repeal of that legislation by the Imperial Parliament before they proceeded to adopt such measures as became necessary from time to time in the government of the country.

45. It is respectfully submitted that, in respect to all these subjects, the Parliament of Canada must be considered to have the plenary powers of the Imperial Government (to quote the words of the Judicial Committee) subject only to such control as the Imperial Parliament may exercise from time to time, and subject also to Her Majesty's right of disallowance, which the British North America Act reserves to Her, and which, no one doubts, will always be exercised with full regard to constitutional principles and in the best interests of the Empire, when exercised at all.

46. For these reasons the undersigned respectfully recommends that Her Majesty's Government be moved to permit the Copyright Act of last Session to go into operation, subject to a date being hereafter agreed upon by Her Majesty's Government for bringing it into force.

47. He respectfully asks, also, that your Excellency's Government may be allowed to discuss all questions raised in this Report at further length and further detail, if necessary, as they involve grave consequences for the Dominion of Canada, not merely in relation to the subject of copyright, but in relation to the rights and powers of Parliament, and he recommends that a copy of this Report, if approved, be transmitted to Her Majesty's Principal Secretary of State for the Colonies.

August 3rd, 1889.

JNO. S. D. THOMPSON,  
Minister of Justice.

No. 4.

LORD STANLEY OF PRESTON to LORD KNUTSFORD.

(Received September 16, 1889.)

MY LORD,

The Citadel, Quebec, August 31, 1889.

I HAVE the honour to acknowledge the receipt of your Lordship's Despatch of the 14th instant,\* introducing Mr. F. R. Dalby, the Honorary Secretary of the Copyright Association, and requesting that I should afford him all proper facilities for explaining to my Ministers his views in reference to certain points connected with copyright legislation.

I have communicated with the First Minister, who is at Rivière du Loup, not far from the address given me by Mr. Dalby, and have asked him to arrange to see him if possible, and I have told Mr. Dalby (who was personally known to me when I was at the Board of Trade), that I will see him here if he will call. All other possible facilities will be given him.

I have, &c.

STANLEY OF PRESTON.

No. 5.

F. R. DALDY, Esq., to COLONIAL OFFICE.

(Received March 3, 1890.)

Aldine House, Belvedere, Kent,  
February 22nd, 1890.

MY LORD,

I HAVE the honour of sending to your Lordship four copies of a letter I have prepared for Sir John Thompson, the Canadian Minister of Justice, on the subject of the recent Canadian Copyright Bill.

I should esteem it a favour if your Lordship would forward it to Sir John Thompson, with any criticisms or opinions you may desire to express upon it, as I am most anxious, in consequence of the kindness and courtesy I have received on this question from the Colonial Office, not to entangle the subject by expressing any opinions to the Canadian Government without your full cognisance.

Your Lordship will notice that I venture to recommend the Canadian Government to drop the subject, because, in my opinion, no further legislation is required on their part, at least at present.

I have not entered into the question of the particular "Royalty editions" which the Royal Commission suggested might be allowed to be published under certain circumstances, because those circumstances do not arise here. It cannot be said that the Canadian market is "not supplied with cheap editions enough to satisfy the wants of the public" under present regulations, and it is only in such a case that their recommendations apply. I think it was never contemplated that the law should be changed merely to confer a doubtful benefit on the Canadian printing trade at the expense of the author's interests.

The difficulties which would arise from the issuing of licensed editions, as proposed by the Canadian Act, appear to me so great that they practically destroy the very principle of copyright. Licensed editions would under any circumstances rob the author of the

\* Not printed.

control of the fruit of his own brain and labour, and interfere with his property to the extent of compelling him to sell it at a fixed price. They would also prevent his having any oversight of his writings, and this is not unimportant, for I have heard of cases in which a publisher employed another writer to finish a novel because the author did not issue it fast enough to suit his purposes. He would be unable to bring out any revised or improved editions, a point to which the late Lord Lytton attached great importance. He could not choose his own publisher. He could not control the accuracy of his writings, which, in many cases, is of vital importance not only to his popularity but to his reputation. These editions would lead to inextricable confusion.

As a case in point, I may refer to a theological work which Messrs. Rivington have been preparing. "An author is bringing out a few copies of an abstract of a theological work, for which he expects some circulation in Canada, because he is well known there, with a view to learn whether the public will give him sufficient encouragement to treat the subject more fully." If a licensed edition be issued he would be barred from bringing out his complete work, because it would necessarily include the smaller, and for this he would have lost his copyright in Canada, and could not even reprint it himself without a license.

Again, take the novel, the class of work most likely to circulate largely there. Mr. Blackmore's popular novel "Lorna Doone," did not attract sufficient attention for the first six months to justify his reprinting it in Canada, but afterwards it sold there very largely. Yet by this Act he would have lost his copyright there. Again, how is he to get adequate remuneration? Take the case of a novel by Edna Lyall passing through "Good Words." What is to prevent a local newspaper reprinting each portion as it appears; and is the royalty to be paid on the whole of each number of the paper or only in proportion to the space it occupies in it? Or if Farjeon's last novel, issued complete, were republished in a Canadian periodical, extending perhaps over 12 numbers, how is he to be paid? Again, if the novel is issued as a *supplement* to a newspaper or periodical, and *given gratis*, how is he to be paid? Remember he is barred from supplying very cheap editions direct now, because the law cannot prevent *their being returned to England to compete with* his home editions. This objection would also apply to the above Canadian cheap edition, and, therefore, he is bound for his own protection to be able to put them into the hands of a publisher he can trust, and bind him under penalty not to send them to England or the other Colonies.

I might multiply illustrations of the difficulties flowing from depriving the author of the control of his work, and even enlarge on its injustice. No other class of property is, to my knowledge, forcibly taken from its producer at, as I have said before, a price fixed without his consent, and I may add that no country has ever hitherto even attempted to rob him of the fruit of his labour, except the United States, and even that country is legislating to concede him this right, though, I admit, under severe restrictions.

I do not know whether you consider that the Canadian Act might be interpreted by the United States as directed against her trade. It would undoubtedly so operate, and, though I cannot feel that she deserves much consideration, it is to be borne in mind that the trade was created by our Act of 1847 and subsequent Canadian legislation, and perhaps, as a friendly Power, she is entitled to notice of this kind of legislation; and it may lead her to remonstrate on account of its being unfair to those of her interests which we have heretofore stimulated.

I earnestly hope the Canadian Government will not persist in this legislation, for I am sure she might substantially gain her end of encouraging her own production, as far as is reasonable, if she fully carries out her Act of 1850, and the Home Government were induced to legislate so as to prevent all colonial reprints from coming into the English market, and thus make it safe for British authors to arrange with Canadian publishers for cheap editions.

I may add the present Act is not in the interest of the Canadian public, for that might be better served by repealing the Canadian Customs duty on books (15 per cent.), nor of Canadian authors, for the Act, if proclaimed, would immediately restrict their copyright to the Dominion and exclude them from the benefits of the Berne Convention, and their present rights in Great Britain and other Colonies would also be lost.

I have, &c.

F. R. DALDY



## Enclosure in No. 5.

Aldine House, Belvedere, Kent,

February 20, 1890.

DEAR SIR JOHN,

I HAVE delayed writing to you till I could assure myself that the Copyright Act passed last year by the Canadian Legislature was *ultra vires*, and therefore could not obtain the Royal Assent without Imperial legislation. From the eminent opinions I have privately obtained, I am now quite satisfied on the point, and I write under the impression that the Law Officers of the Crown will not differ from that view.

The question, therefore, will arise of the course you wish to take respecting your Copyright Act of 1889; and, in view of it not being necessary for you to legislate on account of your having joined the Berne Convention, I ask you, amongst other courses, to consider fully that of letting the subject drop altogether; or, at least for the present, because the legislation and other consideration of Copyright Law now taking place in the United States may considerably modify, if not entirely obviate, the necessity for your dealing with it by legislation at all. I do not know what value attaches to the statement, but I am justified in telling you that the American Copyright League have learned that the most prominent Minister in the United States Government has under consideration the making of a special treaty with Great Britain, after the Bill sanctioning the principle of protection for the property of foreign authors has become an Act.

Should you decide on this course, you have still to consider what steps you will take for the better collection of the author's royalty, under the Act of August 10, 1850.

I think I drew your attention to the fact that out of 20 Colonies, which have passed similar Acts, 17 have made due provision for stamping each imported copy as it passes through the Custom House, and every unstamped copy is liable to seizure and forfeiture. This prevents smuggling, especially if you authorise any person to seize unstamped copies and to retain them as their own on payment of the duty and getting them stamped, for you thereby secure the aid of the booksellers who have honestly paid the duty, because they are naturally anxious to prevent others under-selling them.

The trouble this would impose on the Custom House officers is more apparent than real, for, when several copies are imported in sheets, as only the title-page has to be stamped the stamping will not take long, and in the case of bound-up volumes, those in paper covers can be stamped on the outside, and those in cloth or other binding on the title-page. If you shrink from the expense you can easily make the duty 15 per cent. and retain 2½ per cent. for Customs expenses.

To assist the Custom House officers I would suggest that an alphabetical register be printed of all books liable to duty to date, and that you print annually, for Customs use, an alphabetical supplement; and once in five or seven years you could bring out a new edition of the catalogue incorporating these supplements.

For this register you have the materials in the Customs notices you have received from time to time, and need only arrange the books in alphabetical order.

Our Commissioners of Customs have very kindly agreed to accept entry of a work as soon as it is in the press, to enable them to give you notice for your Customs by the time it is published.

An important advantage of stamping imported copies will be the encouragement of reprinting English copyright works in Canada, because the imported copies will be weighted with 15 per cent. author's royalty, and 15 per cent. Customs duty, together 30 per cent., in favour of those publishers who like to bring out Canadian editions of suitable works by arrangements with their authors; and, if, even now, Messrs. Lovell and Son, of Montreal, Mr. Bryce, of Toronto, and others produce authors' editions of several copyright works, with such a stimulus they would produce many more.

The Governor in Council has not hitherto sent with his remittances under this Act the name of the work on which the duty is paid, and as a consequence it is often very difficult to assign them to the right author, as the publisher to whom it is sent is not told the name of the author to which it belongs. This might be remedied by adopting a form somewhat like the enclosed—I make it as short and simple as possible:—

Name of Book.	English Publisher.	Amount.
"Cleopatra" - - - -	Longmans & Co. - - - -	£ s. d. 0 0 0

I am sure that a re-perusal of the Act of 1850 will satisfy you that Canada undertook efficiently to carry out its intentions, and I do not know a simpler or more effective form of so doing, or one entailing less trouble on all concerned in its administration than the above scheme.

I shall be much gratified if these suggestions help you to put this troublesome subject on a proper footing.

The Hon. Sir John Thompson,  
Minister of Justice,  
Ottawa, Canada.

Believe me, &c.  
F. R. DALDY.

No. 6.

LORD KNUTSFORD to LORD STANLEY OF PRESTON.

MY LORD,

Downing Street, March 25, 1890.

IN reply to your Despatch of 26th August,\* I have to state that I have given very careful consideration to the arguments put forward in the able report of the Minister of Justice, in which the Privy Council concurred, with reference to the Act of the last session of the Dominion Parliament to amend the Copyright Act (cap. 62, Revised Statutes of Canada), but I regret to say that I am unable to authorise you to issue a proclamation to bring that Act into force.

I am advised by the Law Officers that the powers of legislation conferred upon the Dominion Parliament by the British North America Act, 1867, do not authorise that Parliament to amend, or repeal, so far as relates to Canada, an Imperial Act conferring privileges within Canada.

This advice, as your Ministers will observe, by reference to the Parliamentary Paper (Copyright Colonies)† of April 1875, is in entire accordance with the advice tendered by former Law Officers—now Lords Selborne and Herschell—in 1871, and by the Law Officers in 1874 and 1875, and I may add with the judgments of two judges in the case of *Smiles v. Bedford* on Appeal 1, Upper Canada Reports 436. The reasons upon which this view is based are very clearly stated by Lord Carnarvon in his Despatch of 15th June 1874,‡ and I have only to express my concurrence in those reasons.

This important subject will doubtless receive further consideration by your Ministers; and it may, therefore, be perhaps not out of place if I call attention to two provisions in the Act passed last session by the Dominion Parliament, which have been directly brought under my notice, and to which special objection is felt by the proprietors of copyright in this country.

In the first place it has been pointed out, that, under the Canadian Copyright Act of 1875, which had effect given to it by the Imperial Act of 1875, no limitation of time for printing and publishing, or reprinting and republishing, in Canada was imposed, whereas by the fifth section of the Act of the last session, one month only is allowed for such proceeding; and I am assured that in the great majority of cases, it would be practically impossible within that time to make the necessary arrangements. I should hope, therefore, that upon further consideration, it may be recognised that the time proposed is insufficient.

The second provision to which objection is strongly felt, is that which empowers the granting of licenses to print and publish works for which copyright might, but for neglect or failure, have been obtained. I am aware that the principle of granting such licenses was affirmed by the Royal Commissioners on Copyright in their report of the 24th May 1878, and that they recommended such grants "in case no adequate provision be made by republication in the Colony or otherwise, within a reasonable time after publication elsewhere, for a supply of the work sufficient for general sale and circula-

\* No. 3.

† [H. C. 144] April 1875.

‡ No. 4 in [H. C. 144] of 1875.

"tion in the Colony," but the conditions, which, in their opinion, seemed reasonable, as conditions precedent to the granting of such licenses have hardly had effect given to them in this Act, especially when it is remembered that the copyright proprietor is only allowed one month within which to publish or to republish.

And as bearing upon this question of licensing, I enclose, for the consideration of your Ministers, the copy of a letter,\* which I have received from Mr. Daldy, who represents the Copyright Association in this country, and in which some reasons, which appear to me to carry considerable weight, are advanced against the proposed system of licensing.

I observe that in the report of the Minister of Justice, it is assumed that before any proclamations under the Copyright Act of last session could be issued, it would be necessary for Her Majesty's Government to give, on behalf of Canada, notice of denunciation of the Berne Convention. Any action on the part of Her Majesty's Government in this direction has, for the present, been rendered unnecessary, inasmuch as they are not able to concur in the issue of a proclamation.

Your Ministers will doubtless further consider whether it would not, upon the whole, be desirable to leave the law as it now stands, until it is seen what is the outcome of the legislation pending upon the subject of copyright in the United States, and of any negotiations between the Governments of Her Majesty and of the United States, which may be consequent thereon. The result of those negotiations might be to remove some of the difficulties now felt in the Dominion, and to obviate further legislation.

In conclusion I will only add that it is my desire to assist, as far as possible, any well considered measure which, while substantially preserving the rights of copyright proprietors under the Imperial Act, will meet the wishes of the Canadian people.

I have, &c.

KNUTSFORD.

No. 7.

LORD KNUTSFORD to LORD STANLEY OF PRESTON.

[Not answered.]

My Lord,

Downing Street, March 25, 1890.

REFERRING to my Despatch of even date,† respecting the Act to amend the Copyright Act (cap. 62, Revised Statutes of Canada), I think that your Ministers will probably agree with me that it is inconvenient to retain on the statute book a law which has not taken effect, and I should be glad if you will consult them as to whether they propose to repeal it, or whether they would prefer that, under the circumstances, I should submit it to Her Majesty for formal disallowance.

I anticipate that the former course will be more consonant with their wishes; and I may also observe that, if reference is made to the second section of the Colonial Laws Validity Act, 1865, it will be seen that the Act can have no validity in so far as it is repugnant to an Act of the Imperial Parliament extending to the Dominion of Canada.

I have, &c.

KNUTSFORD.

No. 8.

BOARD OF TRADE to COLONIAL OFFICE.

(Received July 10, 1890.)

[Answered by No. 10.]

Board of Trade (Railway Department), London, S. W.,

July 9, 1890.

SIR,

I AM directed by the Board of Trade to transmit to you herewith, for the information of the Secretary of State, a copy of a letter which they have received from the

\* No. 5.

† No. 6.

Central Office of the International Copyright Union at Berne, asking for information on the subject of copyright legislation in Canada during the past year; and I am to request that you will move Lord Knutsford to be good enough to cause this Department to be furnished with any observations which his Lordship may wish to offer in the matter.

I am to add that the Board of Trade would also be glad to receive copies of the Canadian Act referred to by the Central Office, both for transmission to that office and for record in this Department.

I have, &c.

COURTENAY BOYLE.

Enclosure in No. 8.

To the ASSISTANT SECRETARY (Railway Department) Board of Trade, Londres, S.W.  
(No. 258.—Annexes.)

Bureau de L'Union Internationale pour la  
Protection des Œuvres Littéraires et Artistiques,

Berne, le 3 Juillet 1890.

MONSIEUR LE SECRÉTAIRE,

LES journaux nous ont appris qu'un projet de loi sur la protection des droits d'auteur a été présenté le 11 Mars 1889 au Parlement du Canada.

On nous demande si ce projet a été voté par les deux Chambres du Dominion et s'il a reçu la sanction de S. M. la Reine.

On nous parle d'une loi Canadienne qui formerait le chapitre 59 des lois de 1889 et qui aurait reçu la sanction royale le 2 Mai 1889.

Comme nous manquons de renseignements à ce sujet, nous vous serions reconnaissant, Monsieur le Secrétaire, de vouloir bien nous mettre à même de répondre à la demande qui nous est adressée.

Nous saisissons cette occasion pour vous présenter, Monsieur le Secrétaire, avec nos remerciements anticipés, l'expression de notre considération distinguée.

Bureau de l'Union Internationale

[Littéraire et Artistique]

le Secrétaire Général,

MOREL.

P.S.—Nous avons fait de cette question l'objet d'une étude publiée dans les No. 1, 2, 3, et 5 du "Droit d'Auteur" de cette année.

No. 9.

SIR J. S. D. THOMPSON to COLONIAL OFFICE.

(Received July 19, 1890.)

Westminster Palace Hotel, London, S.W.

MY LORD,

July 14, 1890.

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 August 3rd, 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 observations 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 re-publication in Canada, and expressed the hope that, upon further consideration, it might be recognised 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 re-publication made in Canada within the time specified in the Act. The time for re-publication must necessarily be of short duration, because, during that period, the importation of foreign reprints of the work, as well as the re-publication 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, February 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 of 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 in 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 & 6 Vict. 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 memorialised 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 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 November 27th, 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 Right Honourable the 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 Right 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 authorising 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.

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.

SIR, Downing Street, October 30, 1846.  
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 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 the 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 authorising 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.  
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.*

SIR, Downing Street, November 5, 1846.  
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 authorising 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 colonial 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.  
GREY.

After a lapse of more than 40 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 40 year's 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 sevenfold 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, authorising 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 price of British editions has made this unavoidable. In spite of the pointed and repeated warnings to British publishers, given by the Colonial Office for 40 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 tenfold 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 Copyrights Act, 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 Copyright 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" had 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 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; and 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 the American reprints. In many modern instances the British copyright holder has preferred to sell his right to an American publisher rather 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 their interest to deal with Canadian publishers, or to issue colonial editions. Pressure, for 40 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. Overweighted 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 & 11 Vict. 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,

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 memorial 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 Lordships' views.

The reply of the Board of Trade, dated the 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 enquiry 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 of July 1869, the Board of Trade made an extended reply, to which I beg to refer to 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 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 re-publication and re-printing 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 them, in the absence of any Inter-colonial 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 re-publication 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 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 very 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 is fair and reasonable in itself, and that the granting of it would not only promote the interests of 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 taste 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 that publication in the Colony should be equivalent to 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 of 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 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 of 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 of by the Governor-General and transmitted:—

“On a Memorandum, dated 10th May 1872, from the Honourable the Ministers of Finance and Agriculture, reporting that much anxiety has been manifested by Houses of the Canadian Parliament on the unsatisfactory state of the Imperial Copyright Act; that, as no reply has yet been received to the approved Report of the Committee of the Privy Council, dated 1st 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 copyright 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 any 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 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 connexion 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 connexion 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 authorise its being assented to. This latter is known in Great Britain as the "Canadian Copyright Act of 1875." It authorised 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 the 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 re-publications 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 10 years ending in 1876, the amount received from the whole of the 19 Colonies which have taken advantage of the Act was only 1,155*l.* 13*s.* 2*d.*, of which 1,084*l.* 13*s.* 3*d.* 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 summarised in section 195:—

"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 re-publish 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.

"196. The Canadians proposed that they should be allowed to re-publish 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 out.

"197. These considerations led to the suggestion that re-publication should be allowed in Canada under the authors' 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 correct, 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 Reprints 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, 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 re-publication in the Colony or otherwise, within a reasonable time after publication elsewhere, for a supply of the work sufficient for general sale and circulation in the Colony, a license may, upon an application, be granted to re-publish 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 dissented 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 of March last.

The report seems to have been concluded on the 25th May 1878, but the recommendations 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 40 years ago, and after more than 22 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 encouragements 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 25 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 am, &c.

JOHN S. D. THOMPSON,  
Minister of Justice of Canada.

No. 10.

COLONIAL OFFICE, to BOARD OF TRADE.

Sir,

Downing Street, July 17, 1890.

In reply to your letter of the 9th of July,\* I am directed by Lord Knutsford to transmit to you, to be laid before the Board of Trade, a copy of the Canadian Copyright Act Amendment Act of 1889,† together with copies of the correspondence which has passed with the Governor General of Canada on the subject.

The question is still under the consideration of Her Majesty's Government.

I am, &c.

JOHN BRAMSTON.

\* No. 8.

† No. 1.

‡ Nos. 2, 3, 6, and 7.

No. 11.

## COLONIAL OFFICE to FOREIGN OFFICE and BOARD OF TRADE.

[Answered by Nos. 12 and 14.]

SIR,

Downing Street, August 5, 1890.

I AM directed by Lord Knutsford to transmit to you, to be laid before the Marquess of Salisbury, a copy of a memorandum\* by Sir J. S. Thompson, Minister of Board of Trade, Justice in Canada, on the subject of the Canadian Copyright Act of 1889.

Lord Knutsford would be glad if the Marquess of Salisbury Board of Trade would take these papers into consideration in connexion with the papers forwarded in the letter from this Department referred to, and favour him with any observations which <sup>he</sup> <sub>they</sub> may have to offer on the subject.

I am, &amp;c.

JOHN BRAMSTON.

No. 12.

## BOARD OF TRADE to COLONIAL OFFICE.

(Received August 18, 1890.)

[Answered by No. 17.]

Board of Trade (Railway Department), London, S.W.,  
August 16, 1890.

SIR,

I AM directed by the Board of Trade to acknowledge the receipt of Mr. Bramston's letter of the 5th instant,† enclosing copy of a memorandum by Sir J. S. Thompson, Minister of Justice in Canada, on the subject of the Canadian Copyright Act, 1889, and asking for the observations of the Board of Trade on the subject.

In reply, I am to state, for the information of Lord Knutsford, that the Board of Trade do not understand that their observations are asked for as to the competency of the Dominion Parliament to pass the Act in question. Upon this point, therefore, they only desire me to say that uniformity of Imperial statute law as regards matters of such Imperial interest as copyright becomes seriously impaired if Colonial Parliaments are enabled to make provisions of special application.

As regards the provisions of the Act under notice, the Board of Trade are of opinion that Clause 1, which makes the printing and publishing or producing in Canada, or the reprinting and republishing or reproducing in Canada, within one month after publication or production elsewhere of a copyrighted work, and also Clause 3, which empowers any person or persons domiciled in Canada to print and publish or to produce the work for which copyright might have been obtained but for the neglect of the person entitled to copyright to take advantage of the provisions of the Act, are both inconsistent with Imperial legislation and with the International Convention.

The Board of Trade freely admit the disadvantages under which publishers in the Dominion suffer in consequence of the action of publishers in the United States. The latter are untrammelled by any international copyright law or treaty, while the Canadian publisher is not free to reprint except with the permission of the holder of the copyright. But it appears to the Board of Trade that the effect of the Canadian Act would be to enable Canadian publishers to take the very course of which strong complaints are made in the case of American publishers, and that it would deter, rather than encourage, the efforts of all those interested in bringing United States law into conformity with Imperial legislation, and in moving the United States Government to join the International Convention.

The Board of Trade cannot anticipate that the ultimate effect of the Act will be for the advantage of Canadian publishers; but, however that may be, they are clearly of opinion that the proposed Act is against the interests of British authors. They believe that the true method of removing the disadvantages of which the Canadian publishers complain is to be sought rather in the amendment of legislation and procedure in the United States than the adoption of such retaliatory action as the proposed Act seems to seek to establish.

\* No. 9.

† No. 11.

Under these circumstances, the Board of Trade direct me to state that there do not appear to be any special reasons why the Secretary of State for the Colonies should take an exceptionally favourable view of the application of the Dominion Government.

I am, however, to add that the Board of Trade have given great consideration to the complaint referred to in Sir John Thompson's memorandum as to the effect of the Act of 1842, by which copyright is given to any person publishing a literary work in the United Kingdom, if he is a subject of Her Majesty, or resident in any part of Her Majesty's dominions. It is very doubtful whether an alien belonging to a country not party to the Union should have the privilege of obtaining copyright in Her Majesty's dominions for a work published in that country by mere residence in Her Majesty's dominions; and the Board of Trade will be very glad to consider in consultation with the Colonial Office and the Foreign Office, whether it might not be possible, without interference with the Convention or the International and Colonial Copyright Act, to amend the Act of 1842 by withdrawing such a privilege from citizens of States not parties to the Convention.

I am, &c.

HENRY G. CALCRAFT.

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No. 13.

LORD STANLEY OF PRESTON to LORD KNUTSFORD.

(Received September 1st, 1890.)

Stanley House, New Richmond, P.Q.,

August 18, 1890.

MY LORD,

I HAVE the honour to transmit to your Lordship a copy of an approved Minute of the Privy Council of Canada concurring in the views expressed in the letter appended, dated London 14th July,\* from Sir John Thompson to your Lordship with respect to the Copyright Act of Canada.

I have, &c.

STANLEY OF PRESTON.

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Enclosure in No. 13.

CERTIFIED COPY of a REPORT of a COMMITTEE of the HONOURABLE the PRIVY COUNCIL, approved by His Excellency the GOVERNOR GENERAL IN COUNCIL, on the 7th August 1890.

The Committee of the Privy Council have had under consideration the annexed letter, dated London, 14th July 1890,\* from Sir John Thompson, Minister of Justice, to the Right Honourable the Secretary of State for the Colonies, with respect to the Copyright Act of Canada.

The Committee concur in the views therein expressed, and they advise that your Excellency be moved to forward a copy hereof to the Right Honourable the Secretary of State for the Colonies, and that a copy be also sent to the High Commissioner for Canada.

All which is respectfully submitted.

JOHN J. MCGEE,

Clerk, Privy Council.

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No. 14.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received September 3, 1890.)

[Answered by No. 15.]

(Extract.)

Foreign Office, September 1, 1890.

I AM directed by the Marquess of Salisbury to acknowledge the receipt of your letter of the 5th August,† enclosing a copy of a memorandum by Sir J. S. D. Thompson on the subject of the Canadian Copyright Act, 1889.

In reply, I am to request you to state to Lord Knutsford that there appear to be very serious objections to this Act.

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\* No. 9.

† No. 11.

Lord Salisbury would suggest that the Board of Trade, the Incorporated Society of Authors, and the Copyright Association should be consulted before any decision is come to as to the course to be pursued; and his Lordship would be glad to be placed in possession of any observations which may be made on the subject by the Board of Trade or by the societies in question.

In view of the importance of the subject in regard to international copyright, his Lordship would be glad that no final decision should be taken without the concurrence of this Office.

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No. 15.

COLONIAL OFFICE to FOREIGN OFFICE.

SIR,

Downing Street, September 17, 1890.

With reference to your letter of the 1st instant,\* and to previous correspondence respecting copyright in Canada, I am directed by Lord Knutsford to transmit to you, for communication to the Marquess of Salisbury, a copy of a letter† from the Board of Trade, and to state that the Copyright Association and the Incorporated Society of Authors have been invited to express their opinions on the subject.

I am to observe that the report of the Royal Commission on Copyright of 1878 and the unanimous recommendation of the Commissioners (p. xxxiii. of C.—2036, 1878), in favour of the introduction of a licensing system in the Colonies appear to have been overlooked. It is true that Mr. Daldy, one of the Commissioners, now takes a different view to that which he then apparently entertained, but Lord Knutsford sees no reason to withdraw his concurrence in that part of the Report which relates to Colonial copyright. The licensing system was recommended as a means of securing a supply of English literature at cheap prices for Colonial readers, and the International Copyright Act of 1886, although it removed one grievance, caused by the Copyright Act of 1842 (5 & 6 Vict. c. 45), by giving to a person who publishes a book in a colony the same privileges that he would have been entitled to by publication in this country, does not affect the question of supply of English works in the Colonies.

It was with a view to enabling the Colonies to obtain a cheap supply of such literature that the Imperial Act of 1842 was amended by that of 1847, as complaints of the operation of the former Act, the justice and force of which were admitted (*vide* paragraph 187 of the Copyright Commissioners' Report) were pressed upon Her Majesty's Government. The latter Act has, however, been confessedly a failure, and the question to be considered seems to be whether Imperial legislation should be resorted to to enable the Canadians to adopt a system recommended by the Royal Commission.

No doubt the condition attached by the Royal Commission to that recommendation, that a license should only be granted after a reasonable time after publication in England, is very important, and this point was pressed upon the Canadian Government in Lord Knutsford's Despatch of the 25th of March last.‡ But this is a matter for subsequent settlement, and does not interfere with the main principle; and Sir J. Thompson in his letter of the 14th of July last,§ remarks, with especial reference to this point, that "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."

You will observe that the letter from the Board of Trade now communicated to you does not refer to the report of the Royal Commission.

I am, &c.

ROBERT G. W. HERBERT.

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\* No. 14.

† No. 12.

‡ No. 614.

§ No. 911.

No. 16.

COLONIAL OFFICE to THE COPYRIGHT ASSOCIATION and the  
SOCIETY OF AUTHORS.

[Answered by Nos. 18 and 21.]

SIR, Downing Street, September 17, 1890.

I AM directed by Lord Knutsford to transmit to you a copy of a letter from Sir J. Thompson,\* Minister of Justice of Canada, respecting copyright in the Dominion.

I am also to enclose copies of the Canadian Copyright Act of 1889† with Sir J. Thompson's report‡ upon it and of Lord Knutsford's Despatch of the 25th of March last,§ to which Sir J. Thompson refers in his letter to this Department.

These papers show the questions which are at issue, and his Lordship would be glad to be favoured with any observations which the Copyright Association Inc. Socy. of Authors may desire to make upon them.

I am, &amp;c.

ROBERT G. W. HERBERT.

No. 17.

COLONIAL OFFICE to BOARD OF TRADE.

SIR, Downing Street, September 17, 1890.

I AM directed by Lord Knutsford to acknowledge the receipt of your letter of the 16th ultimo,|| respecting the Canadian Copyright Act, 1889.

I am to observe that the licensing system, under which an English book may be republished in a colony under certain conditions, was suggested and approved of unanimously by the Royal Commission on Copyright of 1878, and although Mr. Daldy, one of the Commissioners, now dissents from that view, his Lordship sees no reason to withdraw the opinion which he then arrived at in conjunction with the other Commissioners. The recommendation of that body, as will be seen by reference to their Report (C.—2036) under the head of "Colonial Copyright" was made with a view to removing complaints which arose from the operation of the Imperial Act of 1842, and which were only partly and imperfectly dealt with by the Act of 1847 and the Orders in Council passed under it.

His Lordship is in communication with the Foreign Office, the Copyright Association, and the Incorporated Society of Authors on the subject.

I am, &amp;c.

ROBERT G. W. HERBERT.

No. 18.

THE SOCIETY OF AUTHORS to COLONIAL OFFICE.

(Received November 4, 1890.)

4, Portugal Street, Lincoln's Inn Fields, W.C.

November 3, 1890.

MY LORD, In answer to the letter from Mr. Robert Herbert of the 17th September 1890,¶ I have the honour to inform your Lordship that a meeting of the general committee of the Incorporated Society of Authors, including the sub-committee on copyright, has been held to consider the questions raised by Sir T. Thompson in his report to your Lordship of July 14th, 1890. I am directed by the committee to inform your Lordship as follows:

(1.) They can express no opinion on the question of the general policy which Her Majesty's Government may think fit to adopt towards Canada with regard to the question of copyright.

(2.) They hope, however, that if Her Majesty's Government think fit to undertake legislation in order to give effect to the principles of the Canadian Copyright Act such legislation will embody due precautions for making the collection of royalty charges really efficient.

(3.) They submit that the clauses relating to the collection of royalty charges as drafted in the Canadian Copyright Act 52 Vict. c. 29 are not sufficient for the proper collection thereof, and,

\* No. 9.

† No. 1.

‡ Enclosure in No. 3.

§ No. 6.

|| No. 12.

¶ No. 16.

(4.) It appears to the Committee to be doubtful whether the Canadian Copyright Act 52 Vict. c. 29 does not purport to abolish copyright altogether unless the person entitled thereto reprints or republishes in Canada within one month after printing or publishing elsewhere. At best the language of the Act is ambiguous on this point.

I am, &c.

W. OLIVER HODGES.

No. 19.

LORD KNUTSFORD to LORD STANLEY OF PRESTON.

[Answered by No. 22.]

MY LORD,

Downing Street, November 8, 1890.

WITH reference to your Despatch of the 18th of August,\* I have the honour to transmit to you, to be laid before your Ministers for any observations which they may wish to offer, a copy of a letter† from the Incorporated Society of Authors respecting the proposed Canadian Copyright legislation.

I have, &c.

KNUTSFORD.

No. 20.

COLONIAL OFFICE to FOREIGN OFFICE.

SIR,

Downing Street, November 8, 1890.

WITH reference to your letter of the 1st of September last,‡ I am directed by Lord Knutsford to transmit to you, for the information of the Marquis of Salisbury, a copy of a letter† from the Incorporated Society of Authors on the subject of the Canadian Copyright Act of 1889.

I am, &c.

JOHN BRAMSTON.

No. 21.

F. R. DALDY, Esq., to COLONIAL OFFICE.  
(Received December 15, 1890.)

[Answered by No. 23.]

MY LORD,

Aldine House, Belvedere, Kent,  
December 13, 1890.

I HAVE the honour of sending to your Lordship, herewith, four copies each of Sir John Thompson's Report on Copyright,§ Sir John Thompson's Memorandum on Copyright,|| and the Copyright Association's remarks on the above documents. I avail myself of the opportunity to thank your Lordship again for submitting them to the consideration of the association, and venture to express a hope that the points to which they have drawn attention will prevent further action being taken on the subject; especially now that the American Bill on the subject is nearly sure to be passed.

I have, &c.

F. R. DALDY.

Enclosure in No. 21.

To the Right Hon. LORD KNUTSFORD, G.C.M.G., Her Majesty's Principal Secretary of State for the Colonies.

MY LORD,

London, November 1890.

ON behalf the Copyright Association I beg to acknowledge the receipt of a copy of—

Your Lordship's Despatch to the Governor-General of Canada dated 25th March 1890;

Sir John Thompson's Report to the Canadian Privy Council, August 3, 1889; and His Memorandum on the Canadian Copyright Bill of 1889, addressed to your Lordship under date 14th July 1890.

\* No. 13.

§ Enclosure in No. 3.

† No. 18.

‡ No. 14.

|| No. 9.

I am desired by the Association to thank your Lordship for your courtesy in submitting these documents to their consideration, and to offer to your Lordship on their behalf the following observations respecting them.

Noting their sequence, with reference to the subject under consideration, I would first draw your Lordship's attention to the observation in paragraph 3 of Sir J. Thompson's Report to the Canadian Privy Council, that "important interests are involved," to enable me to ask what are those interests which are so important to Canada?

It cannot be the interests of the Canadian public and readers, for they are amply provided for by the Act of 10 & 11 Vict. cap. 95, and consequent Canadian legislation, and no complaint whatever is made that the Canadian public is debarred from getting cheap editions of English books, and if the Canadians are anxious to cheapen books to the Canadian public why do they impose a 15 per cent. customs duty on all imported copies.

Neither can it be the interests of Canadian authors, for the proposed Bill would effectually restrict these interests by limiting Canadian Copyright to the Canadian Dominion, whereas it now extends to Great Britain and all the rest of the British Dominions, and also throughout the countries in the International Copyright Union.

These important interests can, therefore, only be the printing and publishing interests in Canada.

I think it very desirable to draw your Lordship's close attention to this point, because it demonstrates that the whole demand for injuring British authors' interests is made for the commercial benefit of Canadian printers and publishers. It enables me also to remind you that the only object of copyright legislation throughout the civilised world has hitherto been the protection of the authors' rights, untrammelled by commercial considerations. Even in the protective legislation of the United States of America no provision is made for compelling an American author to *print* his work in his own country.

I feel, therefore, that I am justified in earnestly requesting your Lordship not to take any steps to derogate from the present rights of all British authors, merely for the problematical advantage of Canadian printers.

I say problematical advantage because their legitimate commercial aspirations can be fairly satisfied by other means—to wit, by the Canadian Government carrying out their Act of 1850. The royalty levied by that Act is  $12\frac{1}{2}$  per cent., and the customs duty on imported books is 15 per cent., making together a protective duty of  $27\frac{1}{2}$  per cent. in favour of the Canadian printer and publisher. I cannot realise that any printer or publisher has a right to expect, for his own benefit, more protection than this; and in connexion with this request from Canada I may observe, that it was in deference to her wishes that the Act of 1847 was passed, and that it removed her complaint that her people could not get their literature at a sufficiently cheap rate.

In paragraph 7 Sir John Thompson charges British authors and publishers with greatly abusing their rights by the sale of their copyright privileges to the United States. He must be aware that English authors have not any copyright privileges in the United States, and that the privilege of selling their editions in Canada is only resorted to by bargain with the American publisher, because no effort worth notice has been made by the Canadian publisher to buy the right to issue them. In the instances in which Canadian publishers have offered satisfactory arrangements, before the American publisher intervened, he has generally succeeded. Messrs. Lovell, of Montreal, and Mr. Bryce, of Toronto, have made such arrangements, but *direct with the author* or his representative, not by forcibly depriving him by Act of Parliament of all control over the fruit of his own labour. The difficulty of the Canadian publisher, which he hopes to overcome by the Bill under consideration, is mainly of his own creation. The present law enables him to publish any author's work if he will, as all other publishers do, make it to the author's interest to do so; and even if authors became blind to their own interests, it is hardly the function of a hostile Act of Parliament to insist on their accepting the views of the Canadian publisher as to what their interests are. He has the right to sell his property to what he considers his best advantage without being charged with abusing the law.

Paragraph 6 undoubtedly refers to a blot in our copyright laws of 1842 which ought to be remedied, and I should be glad to see this complaint met by Her Majesty's Government enacting that the citizens of any country not belonging to the International Copyright Union can only acquire copyright within the British Empire on the terms on which the said country grants copyright to authors belonging thereto.

Paragraph 17 to the end deals with a subject which I think it is rather beyond our province to go into with your Lordship. It has had the attention of the Copyright Association, as is evident by their procuring the opinion of Lord Selborne and Lord

Herschell (which have in times past been sent to your Lordship). They consider these opinions sound and trustworthy, and they are strengthened in that view by the recent opinion of the Law Officers of the Crown, referred to in the second paragraph of your Lordship's Despatch of March 25th, 1890.

I venture now to make some references to Sir John Thompson's Memorandum on Copyright, dated July 14, 1890. My references are to the printed copy which I herewith enclose.

On page 7 I am said to be "hostile to any measure by which the right of any colony to self-government on this subject may be asserted or conceded." I certainly think that on such a subject as copyright, the author's rights, both by common law and by statute, should remain in their essential features uniform throughout the whole British dominions. They are so in every other country, and for very good reasons. It has been felt that the principle of protecting an un-earmarked property is peculiar, but thoroughly consonant with the due necessity for protecting the fruit of a man's brain; that grievous wrongs have resulted from the non-recognition of this principle, and that separate and multiplied legislation in each Colony would irrevocably undermine those common rights which are recognised in every civilised country. Especially do I feel that it is unwise to break that uniformity in such a case as the present, in which the whole of the British dominions are treated by the Imperial Parliament exactly alike.

If any new principle required discussing and incorporating in our copyright legislation, I would suggest that a Commission, including some representatives of the Colonies, should meet to consider it, but no principle of copyright is involved, but only that local printers should, under certain circumstances, have a right conferred on them by Act of Parliament to print and publish an author's works without his consent; and on terms dictated therein. I regard this as an unwarrantable and un-called for interference with the right of freedom of contract. Nothing is to be gained by it, but, as I have said before, the problematical advantage of the printer and publisher, who will not take the trouble to buy and sell in the open market, as every other trader does.

I need not refer to what has taken place in correspondence with Canada (*see* page 8), beyond repeating that the Act 10 & 11 Vict. satisfied, and I have reason to believe still satisfies, Canadian readers, and was a fulfilment of the promises made by the Imperial Government to Canada, but I must add that the printer's grievances have to a great extent arisen from the neglect of Canada in carrying it out.

I do not underrate the difficulty of the Canadian frontier, but as I pointed out to Sir John Thompson in the letter to which he refers on page 7, if the Canadians adopt the plan used in most of the other Colonies they can easily overcome them and do more justice to British authors, who look askance at Canadian legislation when they find its government so continuously neglecting an Act it has already passed, and they naturally shrink from placing themselves at the mercy of further similar legislation. Notwithstanding the surrounding difficulties Canada could by reasonable exertion have made arrangements to prevent the pecuniary injuries inflicted by studious neglect of their own agreement. Nearly all the Colonies to which the Act is applied stamp each imported book, and if Canada did so, and rendered each unstamped copy liable to seizure by any person when exposed or offered for sale, and would give that person the book seized on his getting it stamped, the result would be a more honourable carrying out of the Act, and the Canadian publisher who wished to issue an edition by arrangement with the author would have more encouragement to do so. Sir John Thompson writes (on page 16) as if we legislated for the United States, and complains that United States editions are introduced into Canada; but we cannot control the municipal legislation of the United States, and it was at the express request of Canada that the Act admitting United States editions under certain conditions was passed.

As to the American publisher outbidding the Canadian publisher (*see* page 18), it must be borne in mind that this arises from the difference in population. Canada has less than 3,000,000 of English-speaking inhabitants (not 5,000,000, as Sir John Thompson says), and the United States 40,000,000 to 50,000,000. Yet, if the Canadian publisher exerted himself as the American publisher does, he could, and Messrs. Lovell & Co. and Mr. Bryce do, often issue a Canadian edition for the author, and exclude thereby the United States edition. He need not go to Parliament for powers to do this.

I do not think I need answer Sir John Thompson in further detail, because nearly all the Canadian complaints arise from their not carrying out the Act of 1847 (10 & 11 Vict. c. 95). If they now suffer from this cause, at least I think we may call on them to carry it out fully, and ascertain the result before asking the Imperial Government to help them in disintegrating the law as it now stands.



The Copyright Association is emphatically of opinion that the law ought not to be altered as required by Canada, and consider it their duty to do all in their power to oppose the present scheme.

The suggestion of issuing licensed editions, made by the Royal Commission on Copyright, was limited to cases in which "no adequate provision was made, within a reasonable time after publication elsewhere, for a sufficient supply of the work for general sale and circulation in the Colony," and cannot apply to Canada, for her complaint is that foreign reprints are circulated too freely, and that she is not allowed to afford trade protection to her manufactures by making them herself, without buying the right to do so from the author. She admits that she can do so by buying that right, but shrinks from making the arrangement.

The difficulties which would arise from the issuing of licensed editions, as proposed by the Canadian Act, appear to me so great that they practically destroy the very principle of copyright. Licensed editions would, under any circumstances, rob the author of the control of the fruit of his own brain and labour, and interfere with his property to the extent of compelling him to sell it at a fixed price. They would prevent his having any oversight of his writings, and this is not unimportant, for I have heard of cases in which a publisher employed another writer to finish a novel because the author did not issue it fast enough to suit his purposes. The author would be unable to bring out any revised or improved editions; a point to which the late Lord Lytton attached great importance. He could not choose his own publisher. He could not control the accuracy of his writings, which in many cases is of vital importance, not only to his popularity, but to his reputation. Indeed, it has been realised that these editions would lead to inextricable confusion.

As a case in point, I may refer to a theological work which some English publishers have been preparing. "An author is bringing out a few copies of an abstract of a theological work, for which he expects some circulation in Canada (because he is well known there), with a view to learn whether the public will give him sufficient encouragement to treat the subject more fully." If a licensed edition be issued he would be barred from bringing out his complete work, because it would necessarily include the smaller, and for this he would have lost his copyright in Canada, and could not even reprint it himself without a license.

Again, take the novel, the class of work most likely to circulate largely there. Mr. Blackmore's popular novel, "Lorna Doone," did not attract sufficient attention for the first six months to justify his reprinting it in Canada, but afterwards it sold there very largely. Yet by this Act he would have lost his copyright there. Again, how is he to get adequate remuneration? Take the case of a novel by Edna Lyall passing through "Good Words." What is to prevent a local newspaper reprinting each portion as it appears; and is the royalty to be paid on the whole of each number of the paper, or only in proportion to the space it occupies in it? Or if Farjeon's last novel, issued complete, were republished in a Canadian periodical, extending perhaps over 12 numbers, how is he to be paid? Again, if the novel is issued as a supplement to a newspaper or periodical and given gratis, how is the author to be paid?

Remember an author is barred from supplying very cheap editions direct now, because the law cannot prevent their being returned to England or sent to other Colonies to compete with his home editions. This objection would also apply to the above Canadian cheap edition, and therefore he is bound, for his own protection, to be able to put his works into the hands of a publisher he can trust, and also to bind him, under written agreement, not to send them to England or the other Colonies.

Your Lordship, in concluding your Despatch, says that "It is your desire to assist as far as possible any well-considered measure which, while substantially preserving the rights of copyright proprietors under the Imperial Act, will meet the wishes of the Canadian people."

In this desire I am requested to assure you that the Copyright Association participate, but they feel very strongly that no author ought to be deprived of the control of the product of his own brain and labour, and that no plea for the protection of a Canadian industry would justify the sanctioning of such a step.

I am, &c.  
F. R. DALDY,  
H. Sec. to the Copyright Association.

No. 22.

LORD STANLEY OF PRESTON to LORD KNUTSFORD.

(Received January 6, 1891.)

[See No. 24.]

Government House, Ottawa,  
December 20, 1890.

My Lord,

WITH reference to previous correspondence on the subject of the Act passed by the Parliament of Canada in 1889, entitled "An Act to amend the Copyright Act,"\* and to your Lordship's Despatch of the 8th ultimo,† forwarding copy of a letter from the Society of Authors on the copyright question, I have the honour to enclose a copy of an approved minute of the Privy Council concurring in a Report by the Minister of Justice, who suggests the passing of Imperial legislation which shall authorise the Canadian Parliament to deal with the question of copyright notwithstanding any such legislation heretofore passed in relation to this subject. Your Lordship will observe also that the Minister in his Report deals fully with the points raised in the letter enclosed in your Lordship's Despatch above mentioned.

I have, &amp;c.

STANLEY OF PRESTON.

Enclosure in No. 22.

CERTIFIED COPY of a REPORT of a COMMITTEE of the HONOURABLE the PRIVY COUNCIL approved by His Excellency the GOVERNOR GENERAL in COUNCIL, on the 18th December 1890.

THE Committee of the Privy Council have had under consideration a Report dated 15th December 1890, from the Minister of Justice calling attention to a Minute of Council approved by your Excellency under date the 17th August 1889, on the subject of an Act passed by the Parliament of Canada in the session of that year entitled "An Act to amend the Copyright Act."

The Committee concurring in the said report advise that your Excellency be moved to forward a copy to the Right Honourable the Secretary of State for the Colonies.

All which is respectfully submitted for your Excellency's approval.

JOHN J. MCGEE,  
Clerk, Privy Council.

To His Excellency the GOVERNOR GENERAL in COUNCIL.

Department of Justice, Canada, Ottawa,  
December 15, 1890.

THE undersigned has the honour to call your Excellency's attention to the Report which he made to your Excellency on the 3rd August 1889, on the subject of an Act passed by the Parliament of Canada in the session of that year entitled "An Act to amend the Copyright Act."

The Act referred to has not yet been brought into operation as it awaits the signification of the pleasure of Her Majesty's Government that a proclamation should be issued by your Excellency to bring it into force.

In the same connection, the undersigned begs to call your attention to the Despatch from Lord Knutsford to your Excellency, dated 25th March 1890, in which his Lordship is pleased to signify a desire that the matter should be further considered by your Ministers, and in which his Lordship concluded by expressing every desire to assist as far as possible in any well-considered measure which would substantially preserve the rights of copyright holders under the Imperial Act and would at the same time meet the wishes of the Canadian people.

In the month of July 1890, the undersigned had the honour personally to press upon the attention of Lord Knutsford the arguments in favour of the position assumed in the report of the undersigned of the 3rd August 1889, both as to the powers of the Parliament of Canada and as to the reasons why such an Act as the Copyright Act of 1889, should be adopted and be allowed to go into operation.

\* No. 1.

† No. 19.

By permission of his Lordship the views which were then pressed upon this consideration were expressed in writing in a letter from the undersigned to his Lordship, dated 14th July 1890, and the views set forth in that letter were approved by your Excellency in Council on the 7th August last.

The undersigned has had referred to him, in this connection, a despatch from Her Majesty's Principal Secretary of State for the Colonies, dated 8th November last, transmitting a letter to his Lordship from Mr. W. Oliver Hodges, Honorary Secretary of the Copyright Committee of the Society of Authors, in answer to a letter from Sir Robert Herbert of the 17th September 1890.

Mr. Hodges informs Lord Knutsford that a meeting of the General Committee of the Incorporated Society of Authors, including the Sub-Committee on Copyright, had been held to consider the questions raised by the undersigned in his letter to Lord Knutsford of the 14th July 1890, and he states that he was directed by the Committee to inform his Lordship that, while they could express no opinion on the question of the general policy which Her Majesty's Government might think fit to adopt towards Canada with regard to the question of copyright, they hoped that if Her Majesty's Government should think fit to undertake legislation in order to give effect to the principles of the Canadian Copyright Act, such legislation would embody due precautions for making the collection of royalty charges really efficient. They submitted that the clauses relating to the collection of such charges contained in the Canadian Copyright Act of 1889, were not sufficient for the proper collection thereof, and that it appeared to the Committee doubtful whether the Act did not propose to abolish copyright altogether, unless the person entitled thereto should reprint or republish in Canada under its provisions.

The undersigned has now the honour to recommend that an earnest request be made to Her Majesty's Principal Secretary of State for the Colonies that such legislation be brought before the Parliament of the United Kingdom at its present session as may set at rest the questions which have arisen as to copyright in Canada. In making this request your Excellency's Government do not recede from the position which was taken in the report of the undersigned, dated 3rd August 1889, which report was duly approved by your Excellency in Council, but, inasmuch as doubts have been raised as to the power of the Parliament of Canada to pass the Act, it is most desirable and necessary that such doubts should be removed by Imperial legislation. The most satisfactory form, to Canada, in which such legislation should be presented would be by an Act declaring the full authority of Canada to legislate with regard to copyright in this country, notwithstanding Imperial legislation heretofore passed in relation to that subject. Such an Act would only be following the lines of the British North America Act and would only be in accordance with the promises made by Her Majesty's Ministers from time to time, as set forth in the letter of the undersigned to Lord Knutsford of the 14th July.

It would, in the opinion of the undersigned, in view of the doubts which have been expressed, be most desirable that the Canadian Copyright Act of 1889 should also be ratified and confirmed by Imperial legislation.

As regards the objections to the Copyright Act of 1889, stated by Mr. Hodges, the undersigned concurs that great care should be taken to make the collection of royalty charges really efficient. The opinion indicated in the letter of Mr. Hodges, that the clauses relating to such collection which are contained in the Act referred to are not sufficient does not probably make due allowance for the fact that regulations are to be made on that subject by your Excellency in Council, so soon as the Act shall come into force, under the powers conferred by the fourth section. In the approved report of the undersigned, dated the 3rd day of August 1889, it was stated that "the Government of Canada would be prepared to submit to Her Majesty's Government the Regulations which might be adopted under the Act for securing the collection of the royalty and the payment thereof to the proper parties." The undersigned is unable to agree with Mr. Hodges that the effect of the Act of 1889, may be to "abolish Copyright altogether unless the person entitled thereto reprints or republishes in Canada." The Act merely deals with the subject of the reprinting of copyrighted works, under license, and will not be found, on careful perusal, the undersigned believes, to affect the rights of the holders of copyright in any other particular. Besides this, section 6 preserves the rights of those who may have a copyright, when the Act shall come into force, from being affected even to this extent.

On the points mentioned in the letters of Mr. Hodges, there can be no disagreement between your Excellency's Government and the Society which that gentleman represents as to the recognition of the rights of the holders of Copyright and as to the necessity for making the Act effective.

The undersigned recommends that a copy of this report, if approved, be transmitted to Her Majesty's Principal Secretary of State for the Colonies.

Respectfully submitted,

JNO. S. D. THOMPSON,  
Minister of Justice.

No. 23.

COLONIAL OFFICE to F. R. DALDY, Esq.

SIR,

Downing Street, January 16, 1891.

I AM directed by Lord Knutsford to acknowledge the receipt of your letter of the 13th of December,\* on the subject of the Canadian Copyright Bill.

The matter is receiving Lord Knutsford's attention, and a further communication will be addressed to you when it has been fully considered.

I am, &c.

R. H. MEADE.

No. 24.

LORD KNUTSFORD to LORD STANLEY OF PRESTON.

MY LORD,

Downing Street, March 18, 1891.

WITH reference to your Despatch of the 20th December 1890,† I have to acquaint you that the whole subject of Canadian copyright has been under consideration, but that Her Majesty's Government thought that it would, on the whole, be desirable to delay replying to that Despatch until it was seen how the copyright question would be finally dealt with in the United States.

Your Ministers will doubtless also wish to consider the probable effects in Canada of that legislation.

I have, &c.

KNUTSFORD.

No. 25.

LORD STANLEY OF PRESTON to LORD KNUTSFORD.

(Received November 5, 1891.)

[Answered by No. 34.]

Government House, Ottawa,

October 19, 1891.

MY LORD,

I HAVE the honour to transmit to your Lordship, with a request that it may be laid at the foot of the Throne, an address to Her Most Gracious Majesty the Queen, from the Senate and House of Commons of Canada praying for Imperial legislation conferring upon the Parliament of Canada power to legislate in the interests of the people of the Dominion on all matters relating to the subject of copyright; and praying that notice may be given by Her Majesty's Government of the withdrawal of Canada from the Berne Copyright Convention.

I have, &c.

STANLEY OF PRESTON.

Enclosure in No. 25.

TO THE QUEEN'S MOST EXCELLENT MAJESTY.

MOST GRACIOUS SOVEREIGN,

WE, Your Majesty's most dutiful and loyal subjects, the Senate and Commons of Canada in Parliament assembled, humbly beg leave to approach Your Majesty for the purpose of representing:

That by the Statute of Your Majesty's Parliament (5 & 6 Vict. c. 45) the privilege of copyright was given to any person who should publish a literary work in the United Kingdom if he should be a subject of Your Majesty or a resident of any part of Your Majesty's dominions and the republication within the Empire and the importation into the Empire of any copyrighted work was prohibited.

The operation of the above-mentioned Act was attended with great inconvenience to the people of the North American Colonies and formed the subject of formal remonstrances from several of their Legislatures.

\* No. 21.

† No. 22.

These remonstrances were replied to by a Circular despatch from Earl Grey (then Your Majesty's Principal Secretary of State for the Colonies) directed to all the Governors of the North American Colonies. The Circular was in the words following:—

SIR,

Downing Street, November 1846.

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 authorising 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 colonial 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.

GREY.

The intention of Your Majesty's Government, as expressed in this Circular, has never been carried into effect. The importation from foreign countries of works copyrighted in the United Kingdom was permitted under certain conditions, but the republication of such works in the Colonies, even under any conditions as regards the holders of copyright, has never been permitted, nor has the right of the Legislatures of the provinces or of the Dominion of Canada to make enactments to regulate the law of copyright been recognised by Your Majesty's Government, unless such enactments could be shown to be consistent with and subordinate to the Act of the United Kingdom before mentioned.

Your Majesty's Parliament, in the year 1867, in establishing the Dominion of Canada, gave to its Parliament very extensive powers of government, including the right to legislate on this important subject. The Parliament of Canada has enacted several statutes regulating the law of copyright for Canada. These statutes adopted the provisions which the interests and welfare of the people of this country, as connected with this matter, seemed to require, and at the same time gave liberal protection to the interests of all such persons as had acquired, or might acquire, copyright in the United Kingdom. These statutes have always been regarded by Your Majesty's Government, however, as requiring sanction by the Parliament of the United Kingdom and the most recent of them—passed in Canada in the year 1889—remains inoperative for want of the assent of Your Majesty's Government to a proclamation which will bring it into force.

The provision of the Act of 1889 just mentioned are such as are required in the interests of the people of Canada, and its provisions have not been shown to be in any respect unfair as regards any portion of Your Majesty's subjects. The Act was passed unanimously by both Houses of the Parliament of Canada, and has been earnestly pressed by the Government of Canada upon the favourable consideration of Your Majesty's Government.

While your Memorialists hold the view that such a statute is within the competence of the Parliament of Canada, under the British North America Act, they have been informed that doubts upon that subject has been raised, and they humbly submit that such doubts should be removed by statute of Your Majesty's Parliament giving effect to the Canadian Copyright Act of 1889 at once, and confirming the right of the Parliament of Canada, according to the promise made by Your Majesty's Government in 1846, to make laws on the subject of copyright as may from time to time be required for the country, notwithstanding that such laws may be inconsistent with the provisions of Imperial Statutes passed before adoption of the British North America Act of 1867.

Your Memorialists beg to call attention to the fact that Your Majesty's Royal Commissioners on Copyright, in the year 1876, recommended that the Colonial Legislatures

should be given the right to pass statutes embodying principles precisely the same as those which form the basis of the Canadian Act of 1889 before referred to.

We, therefore, humbly pray, that Your Majesty will be graciously pleased to invite such legislation in the Parliament of the United Kingdom as will remove the doubts herein-before referred to, and explicitly confer upon the Parliament of Canada the power to legislate in the interests of the people of the Dominion on all matters relating to the subject of copyright, without regard to the statutes which may have been in force when the Parliament of Canada was established.

We further pray that, in order to give effect to the Act of the Parliament of Canada of 1839 aforesaid, notice may be given by Your Majesty's Government of the withdrawal of Canada from the Berne Copyright Convention.

The Senate,  
Wednesday, 30th September 1891.

House of Commons,  
Tuesday, 29th September 1891.

JOHN ROSS,  
Speaker of the Senate.

P. WHITE,  
Speaker of the Commons.

No. 26.

COLONIAL OFFICE to BOARD OF TRADE and FOREIGN OFFICE.

[Answered by No. 27 and 28.]

SIR,

Downing Street, December 7, 1891.

THE Board of Trade are aware from previous correspondence, that in 1889, a Copyright Act Amendment Act was passed in Canada which was only to come into force upon proclamation by the Governor-General.

This Act was referred to the Board of Trade in the letter from this Department of the Foreign Office 17th of July 1890 and, after full consideration, Her Majesty's Government decided to refuse to instruct the Governor-General to bring it into operation.

This decision was conveyed to the Dominion Government in a Despatch dated the 25th of March 1890,\* in which two points were stated for the further consideration of the Dominion Legislature.

(a.) That one month only was allowed for the republication of an Imperial Copyright work so as to secure copyright in Canada, and that in the great majority of cases it would be practically impossible within that time to make the necessary arrangements;

(b.) That the system of licensing was to be allowed without the condition attached to it by the Royal Commission of 1878.

The Dominion Minister of Justice, Sir J. Thompson, replied to these points in his memorandum of 14th of July 1890,† a copy of which was communicated to you in the letter from this Department of the 5th of the following month, and after giving an historical review of the copyright question in Canada since 1842, he asked that power should be given to Canada by Imperial legislation to deal with copyright questions, and that consent should be given to the bringing into operation of the Canadian Act of 1889.

This memorandum was also referred to the Foreign Office and to the Society of Authors and the Copyright Association, copies of whose replies‡ are enclosed.

In despatches§ since received from Canada, of which copies are enclosed, Her Majesty's Government are again asked to introduce legislation declaring the full authority of Canada to legislate with regard to Copyright in the Dominion, and to ratify and confirm the Canadian Act of 1889 by Imperial legislation.

I am to draw particular attention to the Despatch from the Governor-General No. 274 of the 19th of October, enclosing an address to the Queen from the Senate and House of Commons of Canada containing a prayer to the above effect, and further praying that notice may be given by Her Majesty's Government of the withdrawal of Canada from the Berne Copyright Convention.

Lord Knutsford desires me to state that, as at present advised, he thinks the first request of the Dominion Government should not be acceded to, and that for the reasons stated

\* No. 6.

† No. 9.

‡ Nos. 12, 14, 21, and 18.

§ No. 10.

¶ Nos. 13, 22, and 25.

¶ Not printed.

in his Despatch of the 25th of March 1890, he questions whether it would be right to ratify by Imperial legislation the Act of 1889 in its present shape.

His Lordship is, however, anxious to meet the wishes of the Dominion Government as far as possible, and would propose to inform them that, if the Canadian Legislature will amend the Act by extending the period of one month allowed for republication and adding the condition referred to in his Despatch of 25th March 1890, before the issue of licenses, and submit for approval of Her Majesty's Government satisfactory regulations for making effective the collection of royalties, Her Majesty's Government would be prepared to introduce an Imperial Act for its ratification.

His Lordship would be glad to be informed whether, on further consideration, and having in view the recent legislation upon this subject in the United States, the Board of Trade concur in this view.

Marquess of Salisbury concurs.

As to the request of Canada to withdraw from the Berne Convention, I am to direct attention to the "Proces-Verbal of signature" which will be found printed at pages 16 and 17 of the Parliamentary Paper noted in the margin, and I am to request that Lord Knutsford may be favoured with the opinion of the Board of Trade on this point. (C.—5167, 1887.)

Lord Salisbury  
I am, &c.

JOHN BRAMSTON.

No. 27.

BOARD OF TRADE to COLONIAL OFFICE.  
(Received December 31, 1891.)

Board of Trade (Railway Department), London, S.W.,  
December 30, 1891.

SIR,

I AM directed by the Board of Trade to acknowledge the receipt of your letter of the 7th instant,\* with its enclosures, on the subject of Canadian copyright; and, in reply, to state that they have forwarded your communication to the Secretary of State for Foreign Affairs, with a suggestion that a meeting of representatives of the Departments interested should, in the first place, be held for the purpose of considering the questions raised.

I am, &c.

COURTENAY BOYLE.

No. 28.

FOREIGN OFFICE to COLONIAL OFFICE.  
(Received January 8, 1892.)

(Extract.)

[Answered by No. 30.]

Foreign Office, January 5, 1892.

I AM directed by the Marquess of Salisbury to acknowledge the receipt of your letter of the 7th ultimo,\* on the subject of Canadian Copyright; and I am now to inclose, to be laid before Lord Knutsford, a copy of a letter from the Board of Trade suggesting that a Departmental Committee should be appointed to discuss the questions raised, in the first instance.

I am to say, that Lord Salisbury concurs in this suggestion, and will be prepared to appoint a representative of this Department on hearing that Lord Knutsford approves of this course.

Enclosure in No. 28.

Board of Trade (Railway Department), London, S.W.,  
December 30, 1891.

SIR,

REFERRING to previous correspondence on the subject of Canadian copyright, I am directed by the Board of Trade to transmit to you, herewith, for the information of the Secretary of State for Foreign Affairs, a letter, in original (with its enclosures), that has been addressed to this Board by the Colonial Office in the matter.

I am at the same time to state that the Board of Trade would suggest, for the consideration of Lord Salisbury, whether it might not be desirable that the questions raised should, in the first instance, be discussed at a meeting of representatives of the several Departments interested.

I have, &c.

COURTENAY BOYLE.

\* No. 26.

No. 29.

BOARD OF TRADE to COLONIAL OFFICE.  
(Received January 12, 1892.)

[Answered by No. 30.]

Board of Trade (Railway Department), London, S.W.,  
January 11, 1892.

SIR,

REFERRING to the letter from this Department of the 30th ultimo,\* on the subject of Canadian copyright, I am directed by the Board of Trade to enclose, herewith, to be laid before Lord Knutsford, copy of a communication that has been addressed to this Department by the Foreign Office in this matter.

The Board of Trade would be glad to learn in due course whether Lord Knutsford concurs in the proposal that the questions now raised should, in the first instance, be discussed by a departmental committee.

I am, &amp;c.

COURTENAY BOYLE.

Enclosure in No. 29.

SIR,

Foreign Office, January 7, 1892.

IN reply to your letter of the 30th ultimo, I am directed by the Marquess of Salisbury to state, for the information of the Board of Trade, that his Lordship concurs in the suggestion that the questions now raised as to Canadian copyright should, in the first instance, be discussed by a Departmental Committee; and that, on learning that Lord Knutsford approves of this course, his Lordship will be prepared to direct a gentleman to represent this Department.

I am to suggest that it would be well that the Committee should be attended by the Parliamentary Counsel, who is understood to be at present engaged in drafting a Bill to consolidate and amend the copyright statutes.

I am, &amp;c.

T. V. LISTER.

The Secretary to the  
Board of Trade.

No. 30.

COLONIAL OFFICE to FOREIGN OFFICE and BOARD OF TRADE.

(Extract.)

Downing Street, February 19, 1892.

IN reply to your letter of the 5th ultimo,†  
11th ultimo I am directed by Lord Knutsford to acquaint you, for the information of the Marquess of Salisbury, that he concurs in the Board of Trade, proposal that the Canadian copyright question should be considered by an interdepartmental committee, and that he has appointed Mr. John Bramston, C.B., Assistant Under Secretary of State, to represent this Department.

Lord Knutsford would be glad to be informed of the names of the gentlemen appointed to represent the Foreign Office, and it will probably be convenient that the Committee should hold its meetings in Mr. Bramston's room in this office.

\* No. 27.

† Nos. 28 and 29.



No. 31.

**BOARD OF TRADE to COLONIAL OFFICE.**

(Received May 24, 1892.)

[Answered by No. 32.]

Board of Trade (Railway Department), London, S.W.,

May 21, 1892.

SIR,

REFERRING to previous correspondence on the question of Canadian copyright and the provisions of the Canadian Act of 1889, I am directed by the Board of Trade to transmit to you, to be laid before Lord Knutsford, the enclosed copy of the Report to this Department of the Departmental Representatives and Parliamentary Counsel appointed to consider the subject.

I have, &c.

**HENRY G. CALCRAFT.**

Enclosure in No. 31.

**CANADIAN COPYRIGHT.**

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## CANADIAN COPYRIGHT.

REPORT OF THE DEPARTMENTAL REPRESENTATIVES (OF THE COLONIAL OFFICE, FOREIGN OFFICE, BOARD OF TRADE, AND PARLIAMENTARY COUNSEL'S OFFICE) APPOINTED TO CONSIDER THE CANADIAN COPYRIGHT ACT OF 1889.

To the Right Hon. Sir MICHAEL HICKS BEACH, Bart., M.P., &c., &c.

SIR,

THE Departmental Representatives appointed to consider the Canadian Copyright Act of 1889 have agreed to the following report:—

Question to be considered.

1. The question which the representatives have to consider is what action should be taken with respect to the recent Canadian Copyright Act. For the sake of simplicity, the question is here considered with reference only to books.

Copyright Act of 1842, 5 & 6 Vict. c. 45.

2. The Copyright Act of 1842 gives copyright in a book first published in the United Kingdom for a term of 42 years from first publication, or seven years from the author's death, whichever is longer. The copyright extends to the whole of the Queen's dominions. It is not necessary that the book should be printed in the United Kingdom, and in the opinion of the Law Officers of the Crown it is not necessary that the author should be a British subject or domiciled or resident in the Queen's dominions. First publication in the United Kingdom is consistent with concurrent publication elsewhere.

Objections to the Act of 1842.

3. The Act of 1842 was satisfactory from the point of view of the British author and publisher, because it secured copyright throughout the Queen's dominions. But it was disadvantageous from the point of view of the colonial author and publisher, because it gave no protection to works first published in his own Colony. Within his own Colony he might obtain protection by a Colonial Copyright Act, but that Act could not operate elsewhere. It was also disadvantageous from the point of view of the colonial reader, because it tended to raise the price of copyright books. In the United Kingdom this disadvantage is lessened by the facilities for reading afforded by clubs, book societies, and circulating libraries. But in a sparsely populated country such facilities do not exist, and those who want to read have to buy.

Canadian complaints.

4. Complaints of the operation of the Act of 1842 were urged soon after it was passed, and from the North American provinces urgent representations were made in favour of admitting into those provinces 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 Colonies by the operation of the imperial law of copyright."\*

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\* Report of Copyright Commission, par. 187.

5. On November 5, 1846, Earl Grey, then Secretary of State for the Colonies, sent the following circular Despatch to all the Governors of the North American Colonies:—

Lord Grey's  
circular  
Despatch  
of 1846.

"Sir,

Downing Street, Nov. 5, 1846.

"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 authorising 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 colonial 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.

"GREY."

6. It was, however, eventually determined not to legislate in accordance with the terms of Lord Grey's Despatch, but instead to pass the Imperial Act which bears the short title of the Colonial Copyright Act, 1847, but is commonly known as the Foreign Reprints Act. This Act provided that if Her Majesty was satisfied that a Colonial Act made sufficient provision for securing to British authors reasonable protection within the Colony, she might by Order in Council declare that, so long as the provisions of the Colonial Act were in force, the prohibitions contained in the Copyright Act of 1842 and in the Customs Acts, or in any other Imperial Act, against importing, selling, or otherwise dealing in books copyrighted in the United Kingdom, should be suspended as to that Colony.

Colonial  
Copyright  
Act, 1847;  
10 & 11 Vict.  
c. 95.

7. The Act of 1847, though general in its terms, was intended specially for the benefit of Canada. At that time British copyright was not in any way recognised in the United States, and it was the practice of the United States publishers to reprint in their own country British copyright books at very cheap rates. These cheap copies, owing to various difficulties in giving practical effect to the provisions of the law prohibiting their importation, were largely introduced into Canada.\*

Object of  
Act of 1847.

8. Canada (amongst other Colonies) made what was at the time accepted by the Queen in Council as sufficient provision for securing the rights of British authors, and thus brought herself under the Act of 1847. The provision made by the Canadian Legislature was that American reprints of British copyright works might be imported into the Colony on payment of a Customs duty of 12½ per cent., which was to be collected by the Canadian Government and paid to the British Government for the benefit of the authors interested.†

Canadian  
action under  
the Act of  
1847.

9. The Act of 1847 was satisfactory from the point of view of the Canadian reader, because it enabled him to obtain cheap reprints of British copyright books.

Effect of Act  
of 1847 on  
Canadian  
readers.

10. But from the point of view of British copyright owners the Act of 1847 was very unsatisfactory, and strong efforts were made to procure its repeal. In March 1870, at a meeting of the leading authors and publishers over which the late Earl Stanhope presided, the following resolution was passed, "that a representation be made to the Right Honourable the First Lord of the Treasury, pointing out the great hardships sustained by British authors and publishers from the operation of the Imperial Copyright Act of 1847, and stating the earnest desire they feel that Her Majesty's Government may deem it right to propose its prompt repeal."

Effect of Act  
of 1847 on  
British Copy-  
right owners.

\* Report, par. 190.

† Report, pars. 191, 192.

"Foreign reprints," say the Copyright Commission of 1876, "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 10 years ending 1876, the amount received from the whole of the 19 Colonies which have taken advantage of the Act was only 1,155*l.* 13*s.* 2½*d.*, of which 1,084*l.* 13*s.* 3½*d.* was received from Canada, and that of those Colonies seven paid nothing whatever to the authors, whilst six, now and then, paid small sums amounting to a few shillings.\*

Effect of  
Act of 1847  
on Canadian  
publishers  
Colonial  
Laws  
Validity  
Act, 1865.  
(28 & 29  
Vict. c. 63.)

11. The Canadian publishers also had their grievance. They complained that the effect of the Act of 1847 was to throw the whole of the cheap re-printing business into the hands of United States publishers and printers.

12. In the meantime Imperial legislation took place which bears on the power of Canada to legislate for herself on the subject of copyright. In 1865 was passed the Colonial Laws Validity Act of that year, which declared by s. 2 that—

"Any colonial law which is or shall be in any respect repugnant to the provisions of any Act of Parliament extending to the Colony to which such law may relate, or repugnant to any order or regulation made under authority of such Act of Parliament, or having in the Colony the force and effect of such Act, shall be read subject to such Act, order, or regulation, and shall, to the extent of such repugnancy, but not otherwise, be and remain absolutely void and inoperative."

This enactment merely declared the previous law.

British  
North  
America  
Act, 1867.  
(30 & 31  
Vict.)

13. In 1867 was passed the British North America Act of that year, which provided for the union of Canada, Nova Scotia, and New Brunswick, and the Government thereof. Section 91 of this Act specifies copyright among the subjects which are to be within the exclusive legislative authority of the Parliament of Canada as distinguished from the Legislatures of the several provinces.

Canadian  
resolution of  
1868.

14. To return to the complaints of the Canadian publishers. On the 15th of May 1868 the Senate of Canada passed a resolution urging "the justice and expediency of extending the privileges granted by the Act of 1847, 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 the Dominion." This address was supported by the Finance Minister, the late Sir John Rose, in a memorandum addressed to the Secretary of State on the 1st of July 1868, in which he pointed out that the Canadian public was entirely dependent for its supply of reprints on the United States, to the serious injury of the British author, as not one-tenth part of the reprints entering Canada paid duty; that if Canadian publishers were allowed to reprint, they would supply not on their own market, but part of the United States market, to the great advantage of the author, as the royalty could be more easily and effectually collected than the import duty.

Canadian  
proposals of  
1869.

15. In 1869 the Canadian Government proposed that Canadian publishers should be allowed to reprint the books of English authors without their consent on paying them a royalty of 12½ per cent. on the published price.

It was alleged that by this 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 out.†

Lord  
Kimberley's  
circular  
letter of  
1873.

16. On July 29, 1873, Lord Kimberley sent a circular Despatch to the Governors of the Colonies, together with a copy of a Despatch which he had addressed to the Governor-General of Canada on the question of copyright and the draft of a Bill to amend the Copyright Act of 1842, and asked for suggestions on the Bill. Clause 7 of this Bill contained provisions for republication of copyright books in a colony under a license. The clause is set out in full in Appendix A.

Canadian  
comments on  
circular  
letter of  
1873.

17. In January 1874, the late Mr. Mackenzie, then Premier of Canada, submitted, with the concurrence of the Canadian Privy Council, the following report on the draft Bill accompanying Lord Kimberley's circular letter:—

"1. As regards the extending to Colonial authors the privileges enjoyed by authors under the Imperial Copyright Act, there seems to be no difficulty in the way. The

\* Report, par. 193.

† Report, par. 196.

Canadian Copyright Act of 1868, now in force, gives to English authors all the privileges granted to Canadian authors upon the simple condition of publishing in Canada; and an alteration in the English Copyright Act in the same sense would be accepted as a boon.

"2 As to the question of reprints of copyrights, there ought to be four different interests at stake which are somewhat in conflict, namely, the author's interest, the public interest, the publisher's interest, and the book trade interest.

"3. The authors contend that they have an undeniable and inalienable right to dispose of their property as they please; the public seems to be satisfied with the supply of books which it now gets; and the book trade also appears disposed to be in favour of things as they are.

"4. These three interests are not advocating, at least for the present, any material change beyond extending to Canadian authors the privileges of the Imperial Copyright Act as before stated.

"5. The publishers, however, although not unanimous in their opinions, are advocating the changes which were embodied in the Canadian Act of 1872, intitled 'An Act to amend the Act respecting copyrights,' which Act has been disallowed in England.

"6. As to the draft submitted of a Bill to amend the law of copyright, the undersigned is of opinion that, owing to the intricacy of proceedings therein provided, the operation of such a measure would be attended by difficulties likely to lead to litigation."

"The undersigned, therefore, is of opinion that any change beyond the extending of the privileges of copyright to Canadian authors is not urgent, and that a postponement of the final solution of this complicated question would not be likely to cause detriment to the public interest."

18. In 1875 the Canadian Legislature passed a Copyright Act giving power to any person domiciled either in Canada or in any part of the British dominions, or in any country having a copyright treaty with the United Kingdom, to obtain copyright in Canada for 28 years, with a second term of 14 years. The condition for obtaining such a copyright was to be that the book should be printed and published, or reprinted and\* republished, in Canada. There is a saving (s. 6) for the importation of books lawfully printed in the United Kingdom. The Canadian copyright thus secured was, so far as it related to books first published in the United Kingdom, in addition to and concurrent, though not conterminous, with the copyright throughout the Queen's dominions existing by virtue of the Imperial Copyright Act of 1842. The practical effect of the Canadian Act was to exclude, during the term of Canadian copyright, foreign reprints of such books if they obtained the benefit of the special Canadian copyright by being published and printed in Canada. Under this Act certain works of British authors were published with their consent in Canada at a price not only far lower than that of the British copyright edition, but also lower than that of the competing reprints from the United States, which were thus practically, as well as legally, excluded from Canada.†

Copyright Act of 1875 of Canadian Legislature.

19. Doubts arose whether the Canadian Act was not repugnant to the Order in Council of 1868 for admitting foreign reprints into Canada, and in order to remove these doubts an Imperial Act (38 & 39 Vict. c. 53.) was passed to confirm the Canadian Act. In this Imperial Act a section was inserted, at the instance of British copyright owners, prohibiting the importation into the United Kingdom of cheap Canadian reprints having Canadian copyright under the Canadian Act, and thus placing such reprints in the same position as the familiar Tauchnitz editions.

Imperial Canadian Copyright Act of 1875, 38 & 39 Vict. c. 53.

20. The Canadian Copyright Act of 1875 is still in force. It now appears in the Canadian Statute Book as c. 62. of the Acts of 1886, but seems to have been re-enacted in that year as part of a scheme of statute law revision, in a form which was intended not to affect the validity given to the previous Canadian Act of 1875 by the Imperial Act of the same year.

Re-enactment of Canadian Act of 1875.

21. The discussions connected with the passing of the Canadian Act of 1875, and the Imperial Confirming Act of the same year, were the principal grounds for the appointment of the Copyright Commission of 1876. The Copyright Commission, by their report of 1879, dealt at great length with the question of colonial, and especially Canadian, copyright.

Copyright Commission of 1876.

\* In the copy scheduled to the Imperial Act of 1875 this runs "reprinted or republished."

† Report, par. 201.

Proposals of  
Commission as to  
colonial  
copyright.

22. They admitted that it was 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.\* They did not propose to interfere with the Canadian Copyright Act of 1875, or with the principle of that law. They recommended that the difficulty of securing a supply of English literature at cheap prices for colonial readers should be met in two ways, first, by the introduction of a licensing system in the Colonies, and secondly, by continuing, though with alterations, the provisions of the Foreign Reprints Act.†

Proposals as  
to licensing  
system.

23. In proposing the introduction of a licensing system they did not intend to interfere with the power possessed by the colonial Legislatures of dealing with the subject of copyright so far as their own Colonies are concerned. They recommended 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 should be made, by a republication in the Colony or otherwise within a reasonable time after publication elsewhere, for a supply of the work sufficient for general sale and circulation in the Colony, a license might, on 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 might be settled by any local law. Effective provision for the due collection and transmission to the copyright owner of such royalty should, they said, be made by such law. They did not feel that they could be more definite in their recommendation than this, nor indeed did they think that the details of such a law could be settled by the Imperial Legislature. They would prefer to leave the settlement of such details to special legislation in each Colony.‡

Proposals  
as to foreign  
reprints.

24. As to the Foreign Reprints Act, on careful consideration of the subject, and of the peculiar position of many of the Colonies, and after reference to the answers returned by the Colonies to Lord Kimberley's circular Despatch of the 29th of July 1873, they were not prepared to recommend the simple repeal of the Act of 1847, and the consequent determination of the power now vested in the Queen of allowing the introduction of foreign reprints into Colonies which have made due provision for securing the rights of British authors. They believed that, though the system of republication under a license might be well adapted to some of the larger Colonies which have printing and publishing firms of their own, and which could reprint and republish for themselves with every prospect of fair remuneration, it would be practically inapplicable in the case of many of the smaller Colonies. These latter, they remarked, now depend almost wholly on foreign reprints for a supply of literature, and to sweep away the Foreign Reprints Act, without establishing some other system of supply, would be to deprive them in a great measure of English books. They, however, thought that it had been proved necessary to amend the existing law, and as the provisions theretofore made in different colonies to which the Foreign Reprints Act had been applied by Orders in Council had failed to secure remuneration to copyright owners, they recommended that there should be power to repeal these Orders, and that no future Order in Council should be made under the Act of 1847 till sufficient provision had been made by local law for better securing payment of the duty on foreign reprints to the owners of copyright works. As to what should be considered sufficient security for this purpose they did not go into detail, but merely threw out general suggestions. They recommended that, where an Order in Council had been made for the admission of foreign reprints into a colony, such reprints should not, unless with the consent of the copyright owner, be imported into the Colony—

- (1.) where the owner has availed himself of the local copyright law (if any); or
- (2.) where an adequate provision has been made for his remuneration by royalty; or
- (3.) after there had been a republication under the licensing system.

Recommen-  
dations  
as to colonial  
reprints.

25. As to the admission of colonial reprints into the United Kingdom, after stating the arguments for and against, they were not prepared to recommend the repeal of the section of the Act of 1875 prohibiting that admission. They thought that colonial reprints of copyright works first published in the United Kingdom should not be admitted into the United Kingdom without the consent of the copyright owners, and conversely that reprints in the United Kingdom of copyright works first published in any colony should not be admitted into that colony without the consent of the copyright owners.

\* Report, par. 184.

† Report, pars. 205, 206.

‡ Report, pars. 207, 208.

26. A Consolidation Bill to give effect to the recommendations of the Copyright Commission was introduced in 1881, but did not become law, and has not since been reintroduced by the Government, although Consolidation Bills have been introduced from time to time by private members.

Copyright Bill of 1881.

27. At various times Her Majesty's Government have negotiated treaties with continental States for giving copyright in Her Majesty's dominions to books published in those States, and a series of Acts, known as the International Copyright Acts, and Orders in Council under them, have been passed and made for giving effect to those Treaties.

International copyright.

28. In 1885 Her Majesty's Government were engaged in negotiations for the Convention of Berne, the object of which was to create an international union for the protection of literary and artistic works.

Negotiations for Berne Convention.

29. In the following year was passed the International Copyright Act, 1886, of which the main object was to authorise Her Majesty to accede to the Berne Convention, and to give effect to the Convention by passing the requisite Orders in Council. But the Act also made important amendments of the law with respect to colonial copyright. By s. 8 it provided that the British Copyright Acts should, subject to certain exceptions as to registration and delivery of copies, apply to a literary work first produced in a British possession in like manner as they apply to a work first produced in the United Kingdom. By virtue of this section the author of a book first published in a colony, such as Canada, has copyright throughout the whole of the Queen's dominions. The same section contains a saving (subs. (4)) for the power to pass in any British possession any Act or Ordinance respecting the copyright within that possession of books first published in that possession. Under s. 9 the Queen has power by Order in Council to declare that the Act of 1886, and any Order in Council made under it, shall cease to apply to any British possession.

International Copyright Act, 1886, 49 & 50 Vict. c. 33.

On the 5th January 1889 the Law Officers advised that in their opinion the then existing powers of colonial Legislatures to pass local laws on the subject of copyright in books were probably limited to enactments for registration and for the imposition of penalties with a view to the more effectual prevention of piracy, and to enactments within sub-section (4) of s. 8 of the International Copyright Act, 1886, with reference to works first produced in a colony.

30. The Berne Convention was signed at Berne on the 9th of September 1886. Under this Convention, the States who were parties to it were constituted into a union for the protection of the rights of authors over their literary works, and authors in any of the countries of the union or their lawful representatives were to enjoy in the other countries for their works, whether published in one of those countries or unpublished, the rights which the respective laws of those countries granted or might thereafter grant to natives. The enjoyment of these rights was to be subject to the accomplishment of the conditions and formalities prescribed by law in the country of origin of the work, and was not to exceed in the other countries the term of protection granted in the country of origin.

Signing of Berne Convention.

31. By a protocol attached to the Convention Her Majesty's Plenipotentiaries stated that the accession of Great Britain comprised the United Kingdom and also the Colonies and foreign possessions of Her Majesty. At the same time, they reserve to Her Majesty the power of announcing at any time the separate denunciation of the Convention by India or Canada or any of the other self-governing Colonies. Under Article XX. of the Convention a denunciation does not take effect until after the expiration of 12 months from its date.

Accession of British Colonies to Convention.

32. On the 28th of November 1887 an Order in Council was made adopting the Berne Convention, with respect to the foreign countries parties to the Convention. These foreign countries are in the order referred to as the foreign countries of the Copyright Union, and are, with Her Majesty's dominions, referred to as the countries of the Copyright Union. The Order came into force on the 6th of December 1887.

Order in Council of 1887.

33. Canada expressly assented to the passing of the Imperial Act of 1886, and to the Order in Council of 1887 adopting the Berne Convention.

Assent of Canada to Act of 1886 and Berne Convention.

34. The Imperial Act of 1886 and the Order in Council of 1887 embodied two important principles, the principle of Imperial copyright, namely, that the author of a book first published in any part of the Queen's dominions thereby obtains copyright throughout the Queen's dominions; and the principle of international copyright, namely,

Principles embodied in legislation 1886-87.

that the author of a book first published in any country of the Copyright Union thereby obtains copyright in all the countries of the Copyright Union.

Legal effects  
of Imperial  
Act of 1886.

35. By virtue of the British law, as completed by the International Copyright Act, 1886, and by the Order in Council of 1887—

- (a.) the author of a book first published in any part of the Queen's dominions, say at London or at Quebec, whether the author is an Englishman, Canadian, Frenchman, or American, has copyright in the book throughout the Queen's dominions, for the term allowed by English law, that is to say, for 42 years from first publication, or seven years from the death of the author whichever is longer;
- (b.) the author of a book first published in any foreign country belonging to the Copyright Union, say at Paris, has copyright throughout the Queen's dominions for the same term, or any less term allowed by the law of the foreign country for copyright under that law.

Legal effects  
of Berne  
Convention  
and of foreign  
copyright  
laws.

36. By virtue of the Berne Convention, and of the foreign laws made in accordance with it, the author of a book first published in any part of the Queen's dominions, say at London or at Quebec, has copyright in every country belonging to the Copyright Union for the term allowed by English law, or any less term allowed by the law of the foreign country for copyright under that law. No further registration or formality is required in the foreign country; there is no obligation to reprint or republish; but the mere fact that the work has copyright in Her Majesty's dominions gives it copyright throughout the Union. Copyright includes the exclusive right of translation, if exercised within ten years from publication. The obligation and advantage under the Convention are strictly reciprocal, and it consequently follows that any country which imposes an obligation to print or reprint locally as a condition of obtaining copyright in a book first published in any country of the Copyright Union must withdraw from the union, such a condition being inconsistent with the terms of the Convention.

Canadian  
Act of 1889.

37. In 1889 Canada passed an Act repealing ss. 4 and 5 of the previous Canadian Copyright Act (which sections embodied the conditions for obtaining the especial Canadian copyright), and providing that—

- (a.) Any person domiciled in Canada or in any part of the British possessions (an expression which presumably includes the United Kingdom); or
- (b.) Any citizen of any country which has an international copyright Treaty with the United Kingdom, in which Canada is included (an expression which would, under existing circumstances, include France, but not the United States, and would cease to include France or any other foreign country if Canada ceased to be a party to the Berne Convention);

may obtain exclusive copyright for his book in Canada for 28 years subject to the following conditions:—

- (1.) That the book is before, or simultaneously with, first publication registered in Canada; and
- (2.) That it is printed and published, or reprinted and republished, in Canada, within one month after first publication elsewhere.

The Act goes on to provide that, if a person entitled to obtain copyright in a book under these provisions does not avail himself of them, any person domiciled in Canada may obtain from the Minister of Agriculture a license (which is not to be exclusive) to publish the book in Canada on paying the author a royalty of 10 per cent. on the retail price of each book, published under the license.

Where a license is so issued for a book, and the Governor in Council is satisfied that the book is being published under the license in such a manner as to meet the Canadian demand for it, the Governor-General may by proclamation prohibit the importation of copies of the book while the author's copyright is in force.

But the Act—

- (a.) is not to prohibit the importation from the United Kingdom of books copyrighted there, or lawfully printed and published there; and
- (b.) is not to apply to any book in which before the date at which the Act comes into force, copyright has been obtained in the United Kingdom, or in any country of the Copyright Union.

The object of saving (a) is apparently to let in books published in England, whilst keeping out books published in the United States. The object of saving (b) is to protect existing rights.

The Canadian Act of 1889 was to come into force on a day to be named by a proclamation of the Governor-General. Such a proclamation has not yet been made.

The Act relates to other subjects of copyright besides books.



38. On August 3rd, 1889, Sir John Thompson, Minister of Justice to the Dominion of Canada, submitted to the Privy Council of Canada a report containing arguments in support of the Canadian Act on its merits, and in support of the competency of the Canadian Legislature to pass the Act. He referred to the provision that the Act was not to come into force until proclaimed by the Governor-General, and stated that there was not any intention on the part of the Canadian Government to advise the issue of a proclamation bringing it into force until it had been submitted to Her Majesty's Government with the explanations which the Governor-General's advisers can present, and until Her Majesty's Government should concur in the issue of the proclamation. As to the merits, he argued that the copyright system previously in force under Imperial and Canadian legislation had been found to be most unsuitable to Canada, and that the Berne Convention was found to increase the causes of complaint which existed under the previous law. Under that law, he observed, every work copyrighted in Great Britain has copyright protection without the requirement of publication in Canada. Under the protection of this law United States' authors secure copyright in Great Britain and her possessions by publishing in England (sometimes by publishing a limited edition not intended to supply the market, and not sufficient therefor) and thus secure control of the Canadian market, while a Canadian cannot obtain such copyright privileges in the United States.

Sir John  
Thompson's  
Report to  
the Canadian  
Committee  
of Privy  
Council.

"The rights which British authors and publishers have in British possessions under this condition of the law have been greatly abused by the sale of their copyright privileges to American publishers, and their refusal to sell to Canadian publishers on like terms. By this means United States publishers have been enabled to command the Canadian market under the provisions of legislation which were not intended for their benefit, but for the benefit of the British author and publisher. The prices of American reprints are so low that the British publications have no chance of competing with them in Canada, and, Canadian reprints being prohibited by the copyright law, the business of reprinting for Canadian readers is thus to a great extent thrown into the hands of American publishing houses, to the very great detriment of the publishing interests of Canada.

"These evils," he went on to say, "would be augmented by the provisions of the Berne Convention, which extends the copyright privileges without publication in British possessions to authors of any country which has joined, or may join, the Copyright Union formed by that Convention.

"For the benefit conferred on Canadian authors (who are comparatively a very limited class) of copyright in the countries comprised in the Berne Convention Union, the business of publishing in Canada will be repressed as to works published in all these countries, and the United States' publishers will be free from any restrictions of that kind, not only as to the vast markets of their own country but to Canada as well."

He submitted that the royalty provision of the Act in favour of the holder of British copyright was reasonable and afforded ample facilities for collection. The Government of Canada would, he said, be prepared to submit to Her Majesty's Government the regulations which might be adopted under the Act for securing the collection of the royalty and the payment thereof to the proper parties.

He observed, as regards the policy of permitting republication in Canada in consideration of such a royalty in favour of the holders of the copyright out of Canada, that, under existing legislation, the importation of foreign reprints into Canada is permitted on the imposition of a customs duty in favour of the copyright holder.

The Act of last session, he said, would make the same provision in favour of the Canadian publisher, but under regulations which will restrain the influx of foreign reprints, and afford a better means of collecting the compensation to the copyright holder.

On the question of the competency of the Dominion Parliament to pass the Act he argued at some length that such a power existed under the British North America Act, 1867.

He did not contend that the Canadian legislation would be consistent with the Berne Convention, and he admitted that before the proclamation bringing the Act into operation could be issued Her Majesty's Government must be asked to give the requisite notice of denunciation on behalf of Canada, and that a year's delay must elapse after that notice, and that an order of the Queen in Council must be obtained for releasing Canada from the operation of the statute which makes the Berne Convention operative throughout the Empire.

39. Sir John Thompson's report received the concurrence of the Committee of the Canadian Privy Council, and was forwarded, with the Act of 1889, to the Colonial Office by a Despatch dated 26th August 1889.

Canadian  
Despatch  
1889 to  
Colonial  
Office.

Opinion of Law Officers as to competency of Canadian Parliament to pass Act of 1889.

40. On the question of the competency of the Canadian Parliament to pass the Act of 1889, Lord Knutsford took the opinion of the Law Officers of the Crown, who reported on December 31, 1889, that in their opinion the powers of legislation conferred on the Dominion Parliament by the British North America Act, 1867, do not authorise that Parliament to amend or repeal, so far as relates to Canada, an Imperial Act conferring privileges within Canada, and that in their opinion Her Majesty should withhold her assent to the Canadian Act of 1889.

Despatch of 1890 from Colonial Office to Canada.

41. On the 25th of March 1890, Lord Knutsford sent a Despatch to Lord Stanley of Preston, the Governor-General of Canada, in which he expressed his regret that he was unable to authorise the Governor-General to issue a proclamation to bring the Canadian Act of 1889 into force. Lord Knutsford referred to the advice of the Law Officers as to the competency of the Dominion Parliament to pass the Act. With respect to the merits of the Act, he called attention to two provisions to which special objection was felt by British copyright owners. These two provisions were the limitation of one month for reprinting and republication, and the power to print and publish under colonial licenses.

Newfoundland legislation.

42. Meanwhile Newfoundland had been legislating on somewhat similar lines to Canada. In 1888 Newfoundland passed a Copyright Act which was held to exceed its legislative powers, and was on that ground disallowed. In 1890 it passed a similar Act more limited in its terms, giving Newfoundland copyright for 28 years to an author domiciled in Newfoundland on condition that his book is printed or published in Newfoundland. This Act was referred to the Law Officers for their opinion, and they reported on March 4th, 1891, that they had examined the Act, and being of opinion that its provisions ought to be construed as relating to works first published in Newfoundland they thought Her Majesty's assent need not be withheld, but that the Act might be permitted to come into operation. They suggested, however, that it should be pointed out to the Newfoundland authorities that if s. 5 (which contained the printing condition) should be judicially interpreted to include works other than those first printed and published in Newfoundland the Act would be inconsistent with the Imperial statutes, and further legislation would be necessary.

Sir John Thompson's letter of 1890 to Lord Knutsford.

43. On July 14th, 1890, Sir John Thompson, being then in London, wrote a long letter to Lord Knutsford, in which he recapitulated the history of copyright legislation with respect to Canada, and the arguments in support of the Canadian proposals, expressed little hope of any satisfactory copyright arrangement being made with the United States, and concluded by asking that a final decision on the case of Canada should no longer be postponed to await the action of the United States. In connexion with this point he urged—

“(1.) 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;

“(2.) 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.”

American Copyright Act of 1891.

44. In March 1891 the Legislature of the United States passed an Act which gave American copyright in a book to an author being a citizen or subject of a foreign State or nation on condition that two printed copies of the book printed from type set within the limits of the United States must be delivered or deposited in accordance with the requirements of the Act on or before the publication of the book. Section 13 provides that the Act is only to apply to a citizen or subject of a foreign State or nation—

(a.) If such foreign State or nation permits to citizens of the United States of America the benefit of copyright on substantially the same basis as to its own citizens; or

(b.) When such foreign state or nation is party to an international agreement which provides for reciprocity in the granting of copyright, by the terms of which agreement the United States may, at its pleasure, become a party to the agreement.

The existence of either of these conditions was to be determined by the President of the United States, by a proclamation issued from time to time as the purposes of the Act might require.

The Act was to come into force on the 1st of July 1892.

45. In reply to an inquiry from the United States Minister, Mr. Lincoln, the Marquess of Salisbury on June 16th, 1891, wrote as follows:—

“Her Majesty’s Government are advised that, under existing English law, an alien by first publication in any part of Her Majesty’s dominions can obtain the benefit of English copyright, and that contemporaneous publication in a foreign country does not prevent the author from obtaining English copyright;

“That residence in some part of Her Majesty’s dominions is not a necessary condition to an alien obtaining copyright under the English copyright law; and

“That the law of copyright in force in all British possessions permits to citizens of the United States of America the benefit of copyright on substantially the same basis as to British subjects.”

Report as to  
state of  
British law.

46. On the 1st of July 1891 the President of the United States proclaimed that the first of the conditions specified in s. 13 of the Act of Congress was fulfilled in respect to the citizens or subjects of (amongst other countries) Great Britain.

Proclamation  
by President  
of United  
States.

47. Accordingly, by virtue of the American Copyright Act, and of the President’s proclamation, which, however, is revocable, the author of a book first published in any part of the Queen’s dominions, say at London or Quebec, and printed in the United States, has, on compliance with the requirements of the Act as to delivery or deposit, copyright in the United States for the term recognised by the law of the United States.

Effect of  
American  
Copyright  
Act.

48. On December 19th, 1891, Mr. Blaine wrote to Sir Julian Pauncefote stating that the Government of the Dominion of Canada refuses to admit citizens of the United States to the privilege of registration of copyright in Canada on their complying with the conditions of printing and publishing in Canada under the assurance given by Her Majesty’s Government and under the proclamation of the President, the ground of refusal appearing from the letter of the Registrar of the Department of Agriculture at Ottawa to be that the United States’ Act and the President’s proclamation do not constitute an international copyright treaty, and that therefore citizens of the United States cannot register under the Canadian Act. Mr. Blaine asks for “an explanation of this important discrepancy between the assurances given by Her Majesty’s Government and the course of the Dominion Government in the matter of the copyright privilege of citizens of the United States. The declaration of Lord Salisbury,” he observes, “and its acceptance by the United States Government constituted an international arrangement which this Government desires to observe and maintain in its entirety, and I should much regret if any untoward circumstance should constrain its abandonment or essential qualification.”

Refusal of  
Canada to  
admit United  
States books  
to Canadian  
copyright.

49. We are now in a position to consider how far the Canadian Act of 1889 is consistent—

(a.) with the Berne Convention;

(b.) with the arrangement with the United States; and

(c.) with Imperial legislation;

and how far the grievances which it proposes to meet are substantial, and the proposals which it embodies are satisfactorily on their merits.

Questions  
raised by  
existing  
state of  
facts.

50. Sir John Thompson admits, as has been seen, that the Canadian Act is inconsistent with the Berne Convention, and that, consequently, a necessary condition precedent of its obtaining the force of law is the withdrawal of Canada from that Convention.

Inconsistency of  
Canadian  
Act with  
Berne  
Convention.

Under s. 9 of the Act of 1886 the Queen has power, by Order in Council, to declare that the Act of 1886 and the Order of 1837 shall cease to apply to any British possession.

The Queen can, therefore, on the application of Canada, make an Order directing that the Act of 1886 and the Order of 1887 shall cease to apply to Canada. But the Act and Order stand or fall together, and if Canada excepts herself from the Act she must except herself from the Order also, and vice-versa.

If, therefore, such an excepting Order is made for Canada the effect will be as follows:—

The author of a book first published in London will still, by virtue of the Imperial Acts before 1886, have copyright in Canada.

But the author of a book first published in Canada will cease to have copyright in the United Kingdom or in Australia, or in any country belonging to the Copyright Union.

And the author of a book first published in Australia, or in any other British possession except Canada, or in France, or in any other foreign country belonging to the Copyright Union, will cease to have copyright in Canada.

If Canada presses for withdrawal from the Berne Convention, her request cannot well be refused. But her withdrawal would be a matter for much regret, since it would strike a serious blow at the policy of Imperial and international copyright embodied in the legislation of 1886. It would be a retrograde measure which would commit Canada to a policy of isolation and of antagonism to the community of civilized States who have become parties to the Treaty of Berne.

Deprivation of Canadian copyright might be seriously detrimental to the interests of Australian authors, say, for instance, of a Melbourne novelist whose works are likely to obtain extensive circulation in Canada. If, however, the interests of publishers or printers were allowed to prevail over those of authors, the lead given by Canada would not improbably be followed by other Colonies, and thus the whole system of Imperial copyright would be broken up.

As has been seen,\* even if Canada were to denounce the Berne Convention, a year must elapse before any Canadian legislation inconsistent with the Convention could take effect.

Inconsistency with arrangement with United States.

51. The grounds of the Canadian contention that United States authors and publishers are not entitled to the benefit of the Canadian copyright under the Canadian Act of 1875† are not fully before us, but the contention seems to be technically correct. Moreover the inconsistency between the Canadian action and the assurance given by Her Majesty's Government to the President of the United States, is perhaps more apparent than real, for refusal to register under Canadian Act apparently does not deprive a book first published in any part of Her Majesty's dominions (including Canada) of the copyright to which it is entitled in Canada as well as in the United Kingdom under the Imperial Acts of 1842 and 1886. Under the Act of 1842 a book first published in the United Kingdom has copyright in Canada, and Canadian legislation is not needed to give, and cannot take away, that copyright. But under that Act a book first published in Canada had no copyright, and colonial legislation was required to give such copyright. Consequently for the protection of such books the Canadian Copyright Act was necessary, though it could not operate beyond the limits of the Colony. But since the passing of the Act of 1886, which gives copyright to books first published in any part of the Queen's dominions, a Canadian Copyright Act is no longer necessary, and the only effect of the Canadian Act of 1875 appears to be to prevent the importation of unauthorised reprints under the Foreign Reprints Act,‡ The Canadian Act of 1875 is so worded as to give rise to misconception on this point, and the Act of 1889, if confirmed by Her Majesty's Government after the assurance given to the Government of the United States in 1891, would give rise to similar misconception and misunderstanding. Of course if Canada were to withdraw from the operation of the Act of 1886, and still more if she were allowed to withdraw from the operation of the Act of 1842, there would be not merely a formal but a substantial inconsistency between her legislation and Lord Salisbury's declaration.

Inconsistency with Imperial legislation.

52. The Canadian Act of 1889 is, as has been seen,§ inconsistent with Imperial legislation, apart from the effect of the Imperial Act of 1886, and therefore could not obtain the force of law without an Imperial confirming Act.

Objections to confirmation of Canadian Act.

53. To the passing of an Imperial Act confirming the Canadian Act, in its present form, there are obvious objections.

It would involve abandonment of the policy of international and Imperial copyright which Her Majesty's Government adopted, and to which Canada assented only six years ago.

It would be at least open to the charge of being inconsistent with the declaration as to the law of the United Kingdom and the British possessions which was made to the United States last year, and on the faith of which the United States admitted British authors to the benefit of their copyright law.

It would be inconsistent with the policy of making copyright independent of the place of printing which Her Majesty's Government have for many years been urging the United States to adopt.

It would impair the rights in Canada of British authors by whom the Canadian market is principally supplied.

\* Pars. 31, 38.

† Par. 18.

‡ If registration is required before proceedings can be taken for infringement of this right, and if the Canadian Act does not provide for registration by a United States author he can entitle himself to the remedy by registering at Stationers Hall in London (see 49 & 50 Vict. c. 33. s. 8).

§ Par. 40.

On these grounds, amongst others, a Bill for such an Act, if introduced into the British Parliament, would, we apprehend, be vehemently opposed, and would have very little chance of becoming law.

54. The Canadian case may be looked at from the point of view of the Canadian reader, of the Canadian author, and of the Canadian publisher and printer.

Nature of  
Canadian  
grievances.

It is doubtful whether the Canadian reader has under existing circumstances any ground of complaint at all. Under the operation of the Foreign Reprints Act he is abundantly supplied with cheap reprints, and it cannot matter to him, as a reader, whether these reprints are produced in Canada or in the United States. It is the British author and publisher who have to complain of the Foreign Reprints Act, and the reality of their grievances was admitted by the Copyright Commission of 1876.

The Canadian author may perhaps be treated as belonging rather to the future than to the present. But nothing can be more detrimental to his interests than legislation which, like the Canadian Act of 1888, would isolate Canada from civilized communities which have adopted the principles of the Berne Convention, and would deprive their authors of copyright in every country outside their own borders.

The present demand for legislation on the lines of the Canadian Act of 1889 appears to come, not from the Canadian reader or author, but from the Canadian publisher and printer, who feel severely the competition of their rivals over the United States border, and wish to protect themselves by excluding their rivals' wares. The arguments in their behalf are to be found in Sir John Thompson's report of 1889 and letter of 1890.\*

It may be doubted whether there is any foundation for his suggestion that the grievances of the Canadian publishers have been augmented by the Berne Convention. Before that Convention countries like France, which had copyright treaties with the United Kingdom, were entitled, under those treaties and the International Copyright Acts, to copyright in Canada.

Nor does it appear that the effect of the recent American Act will be to increase the inducement to American publishers to reprint British books. Before the Act they could reprint any such book freely; since the Act they must make arrangements with such authors as take advantage of the provisions of United States legislation. What the Act really does is to increase the inducements to British authors to enter into such arrangements.

And the real grievance of the Canadian publishers is that they are undersold by competitors who have the advantage of larger capital and a larger market, and in whose favour protective legislation is enforced against their weaker rivals.

The restrictive conditions attached to United States copyright by United States Legislation make the demand for the imposition of corresponding restrictions on Canadian copyright, and the grant of countervailing facilities for Canadian reprints at least intelligible.

It must, however, be remembered that there is the same difficulty here as in other cases in reconciling the rival policies of cheapening wares to the consumer and protecting the producer. What the Canadian reader wants is to get cheap books wherever printed. What the Canadian publisher and printer want is to keep out books, cheap or otherwise, not printed or published at their own establishments. The legislation for which they ask could hardly lower, and might possibly raise, the price of books to the Canadian reader. The simplest and most effectual mode of lowering the price of Canadian books would be to remove or reduce the Canadian import duty of 15 per cent. on books.

55. Is it not, however, possible to devise some form of legislation which would meet Canadian grievances without running counter to the policy affirmed in 1886, or imperilling the arrangement with the United States? Admitting, as we must, that the present state of the Canadian law is unsatisfactory, and that Her Majesty's Government may fairly be asked to consider whether any means can be found for meeting the Canadian demands, the course which seems open to the least objection would be that which would follow most closely the lines indicated by the report of the Copyright Commission.

Suggestion  
for legisla-  
tion.

56. It might be conceded that on proof of a book first published in the United Kingdom, and by reason of such publication having copyright in Canada, not being produced within a reasonable time either in the United Kingdom or in Canada, at such a price as to meet the Canadian demand, there should be power to grant a license for its publication in Canada on the terms of paying a royalty to the copyright owner. But this power should be checked by more effective safeguards than are provided by the

Licenses for  
republica-  
tion.

\* Pars. 38 and 43.

Canadian Act of 1889, and should be made subject to the conditions corresponding as closely as practicable to the suggestions of the Copyright Commission.\* Twelve months might be allowed as a reasonable time for cheap reproduction, and during that time the imperial copyright should remain unimpaired. The amount of the royalty might perhaps be 15 per cent., so as to correspond with the amount of the existing import duty on books. The royalty might be levied by means of a stamp on each copy, and if unstamped books are offered for sale they should be liable to seizure. These provisions should be embodied in the Act itself, and not in regulations made under it.

Provisions to this effect would require Imperial legislation to confirm them. They would be open to objection from the point of view of the copyright owner. They would possibly be inconsistent with the views of the signatories of the Berne Convention as to the rights which copyright should involve. But they would apparently not be in conflict with the terms of the Convention itself, for the Convention merely stipulates that foreign copyright owners are to be entitled to the same rights and privileges as British copyright owners, and, if the rights of British copyright owners are cut down by such licenses, foreign copyright owners are not entitled to complain of their rights being cut down to a similar extent. Nor would they conflict with the arrangement with the United States.

Copyright in works other than books.

57. It is suggested that such Canadian legislation as is required should be confined to books. Copyright in musical, dramatic, and artistic works raises other and very difficult questions.

Possibility of further restrictions.

58. If any further legislation is required for the benefit of Canadian publishers and printers perhaps Canadian statesmen may suggest it. Several suggestions made to us are open to objection on the ground of conflicting either with the treaty of Berne or with the declaration made to the United States. But possibly something might be done by an amendment of the Canadian Customs Acts following the lines of section 42 of the Customs Law Consolidation Act, 1876 (39 & 40 Vict. c. 36.†) The policy of that section has been much criticised‡ and is open to serious objection, but so long as it is maintained in the United Kingdom, it is a ground for defending an enactment of similar principle in a colony.

Repeal or modification of Orders under Foreign Reprints Act.

59. If Canada is allowed to grant licenses for the reprinting of British copyright books either the Foreign Reprints Act should cease to apply to Canada, or at least she ought, in accordance with the recommendations of the Copyright Commission,§ to make better provision by law for securing to the owners of copyright works the payment of the duty upon such foreign reprints as would be still admitted into the colony, and there should be power, in the event of such provision not being made, to revoke the existing Orders in Council under which foreign reprints are so admitted.

We have the honour to be,

Sir,

Your obedient servants,

BALFOUR OF BURLEIGH.

H. G. BERGNE.

JOHN BRAMSTON.

C. P. ILBERT.

20th May 1892.

## APPENDIX A.

### EXTRACT from Draft Bill accompanying Circular Letter of 1873.

“7. Where it appears to Her Majesty in Council that in any British possession effectual and reasonable provision has been made by an Act of such British possession for all the following objects, namely,—

“(a.) For the registration and protection in such British possession of books first published out of such British possession, and entitled to copyright therein ;

“(b.) For collecting and remitting the percentage payable under this Act upon reprints of such books sold in pursuance of a license under this Act in such British possession ;

Publication in a British possession of books first published out of such British possession.

\* See Appendix B.

† Extended by 52 & 53 Vict. c. 42. s. 1.

‡ See Report of Copyright Commission, pars. 217-226

§ Report, par. 213.

“(c.) For making to one of Her Majesty’s Principal Secretaries of State, to be laid before Parliament, returns of the numbers and prices of reprints of the said books sold in such British possession, and such other particulars with respect to those reprints as the Secretary of State may require ;

“(d.) For preventing the importation into such British possession of foreign reprints except according to this Act ;

“(e.) For imposing, collecting, and remitting a reasonable per-centage upon all foreign reprints imported into such British possession according to this Act ;

“(f.) For the periods directed by this section to be provided by an Act of the British possession, and the otherwise carrying into effect of this section ; and

“(g.) For any other objects for which, in the opinion of Her Majesty in Council, provision ought for the purposes of this Act to be made ;

“Her Majesty may, by Order in Council, direct that, from and after the day of the date of the Order, or such later day as may be specified in the Order (which day is in this Act referred to as the commencement of the Order), this section shall apply to such British possession, and thereupon, so long as the said Order remains in force, the following provisions of this section shall apply in such British possession to every book first published out of such British possession after the commencement of the Order and entitled to copyright therein, (that is to say) :—

“(1.) If within such reasonable period after the first publication of the book, as may be provided by the said Act of the British possession the book is not published in such British possession in such number and manner as are suitable for general circulation therein, any person may apply to such court in the British possession as may be fixed by the last-mentioned Act, for a license to publish such book, and the court may, if it seems just, grant such license, subject to the provisions of this Act, upon such terms and subject to such conditions as the court thinks just ;

“(2.) The application shall be made, and the proceedings upon such application shall be conducted, in such a manner as may be from time to time directed by the law of such British possession, or, if there is no such law, as the court by general orders or rules from time to time directs ;

“(3.) An appeal to Her Majesty in Council shall be from any order made by the court in pursuance of this section ;

“(4.) Every such appeal shall be referred to the Judicial Committee of the Privy Council, and shall be dealt with by them as other appeals from courts in such British possession ;

“(5.) An order granting a license shall not be suspended by such appeal, but the person in whose favour the order is made shall be liable to account for profits, or to pay damages as may be directed by Her Majesty in Council when the appeal is decided ;

“(6.) After the expiration of such reasonable period, not being less than six months, from the first publication of the book, as may be provided by the said Act of the British possession, if the book is not then published in such British possession in such number and manner as are suitable for general circulation therein, any person may, notwithstanding anything in this Act, import into such British possession foreign reprints of such book, subject to the provisions of this Act and of the said Act of the British possession.

“Where the last-mentioned Act is altered by any subsequent Act of the said British possession the Order in Council shall not be affected by such alteration, unless it seem fit to Her Majesty in Council to revoke or alter such order.”

## APPENDIX B.

### EXTRACTS FROM REPORT OF COPYRIGHT COMMISSION.

206. We recommend that the difficulty of securing a supply of English literature at 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 Reprints Act.

207. In proposing the introduction of the licensing system it is not intended to interfere with the power now possessed by the Colonial Legislatures of dealing with the subject of copyright, 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 a reasonable time after publication elsewhere for a supply of

the work sufficient for general sale or circulation in the Colony, a license may, upon an 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.

10 & 11 Vict.  
c. 95.

209. With regard to the continuance of the Foreign Reprints Act, we have already stated that strong efforts have been made to procure its repeal. In March 1870, at a meeting of the leading authors and publishers, over which the late Earl Stanhope presided, the following resolution was passed: "That a representation be made to the Right Honourable the First Lord of the Treasury, pointing out the great hardships sustained by British authors and publishers from the operation of the Imperial Copyright Act of 1847, and stating the earnest desire they feel that Her Majesty's Government may deem it right to propose its prompt repeal."

Parl. Papers  
Colonial  
copyright  
C., 1067,  
July 1874  
and 144,  
18 April,  
1875.

210. We are fully sensible of the weight that must attach to the opinions of persons so qualified to form a judgment on this matter, but upon careful consideration of the subject and of the peculiar position of many of Your Majesty's Colonies, and upon this point we would refer to the answers returned by the Colonies to Lord Kimberley's circular Despatch of the 29th July 1873, we are not prepared to recommend the simple repeal of the Act of 1847, and the consequent determination of the power now vested in Your Majesty, of allowing the introduction of foreign reprints into Colonies which have made due provision for securing the rights of British authors.

211. We believe that although the system of republication under a license may be well adapted to some of the larger Colonies which have printing and publishing firms of their own and which could reprint and republish for themselves with every prospect of fair remuneration, it would be practically inapplicable in the case of many of the smaller Colonies. These latter now depend almost wholly on foreign reprints for a supply of literature; and to sweep away the Foreign Reprints Act without establishing some other system of supply would be to deprive them in a great measure of English books.

212. But we are of opinion that it has been proved necessary to amend the existing law, for the purpose of more effectually protecting the rights of owners of copyright whilst affording to colonial readers the means of making themselves acquainted with the literature of the day.

213. As the provisions hitherto made in the different Colonies to which Orders in Council have been applied, have failed to secure remuneration to proprietors of copyright, we recommend that power should be given to your Majesty to repeal the existing Orders in Council and that no future Order in Council should be made under that Act until sufficient provision has been made by local law for better securing the payment of the duty upon foreign reprints to the owners of copyright works.

214. Probably it would be desirable to grant a certain period to the Colonies, for the purpose of enabling them to propose further and better provisions, before such revocation actually takes place. In that case, however, it should be clearly understood that Your Majesty is in no way pledged, by the grant of such delay, to issue any fresh Order in Council; and power should be given to Your Majesty in Council to revoke, at any time, any future Order in Council, should the provisions of the Colonial law prove practically insufficient.

215. It is perhaps hardly within the scope of this Commission to suggest what provisions Your Majesty should be advised to consider sufficient, within the meaning of the Act, to secure the rights of the proprietors of copyright. But it appears to us that possibly some arrangement might be effected by which all foreign reprints should be sent to certain specified places in the Colony and should be there stamped with date of admission upon payment of the duty, which could then be transmitted here to the Treasury or Board of Trade for the author. All copies of foreign reprints not so stamped should be liable to seizure, and it is worthy of consideration whether some penalty might not also be affixed to the dealing with unstamped copies.

216. And having regard to the power which we have contemplated for authors to obtain colonial copyright by republication in the Colonies and to the licensing system



which we have suggested, we recommend that where an Order in Council for the admission of foreign reprints has been made, such reprints should not, unless with the consent of the owner of the copyright, be imported into the Colony:—

1. Where the owner has availed himself of the local copyright law, if any;
2. Where an adequate provision, as pointed out in paragraph 207, has been made; or
3. After there has been a republication under the licensing system.

No. 32.

COLONIAL OFFICE to BOARD OF TRADE.

[Answered by No. 33.]

SIR, Downing Street, June 4, 1892.

IN reply to your letter of the 21st ultimo\*, enclosing a copy of the report of the Departmental Committee on the Canadian copyright question, I am directed by Lord Knutsford to acquaint you, for the information of the Board of Trade, that his Lordship proposes, if the Board of Trade concur, to send a copy of the report to the Governor-General of Canada, and to invite the views of his Ministers on the subject.

I am, &c.

EDWARD WINGFIELD.

No. 33.

BOARD OF TRADE to COLONIAL OFFICE.

(Received June 20, 1892.)

Board of Trade (Railway Department) London, S.W.,

SIR, June 15, 1892.

I AM desired by the Board of Trade to say that they have had under their consideration the correspondence which has taken place on the subject of the Canadian Copyright Act, and your letter of the 4th instant,† with regard to the report thereon of the recent Inter-Departmental Committee.

The Board of Trade note the suggestions made in paragraphs 55 and 56 of that report with reference to Imperial legislation in the direction therein suggested. It would be obviously useless to introduce legislation on such a subject during the present session, there being no possibility of passing a measure during the short period which remains before the dissolution of Parliament.

With regard to the introduction of such a measure in an ensuing session, I am to state that the Board of Trade share the apprehension of the Inter-Departmental Committee that the provisions suggested would be open to objection from the point of view of the copyright owner, and "would possibly be inconsistent with the views of the signatories of the Berne Convention as to the rights which copyright should involve;" and they are of opinion that the introduction of the measure would lead to difficulties having their origin in Great Britain, and arising in States parties to the Convention.

Notwithstanding those difficulties, the Board of Trade are of opinion that such legislation as is contemplated might properly be introduced if it could be regarded as a settlement of the question which has arisen with Canada, and on this ground it seems to the Board of Trade, that it would be desirable to ascertain the views of the Ministers of the Governor-General of Canada with regard to the report.

It is, moreover, not clear to the Board of Trade that Canadians have sufficiently considered and fully appreciate the results which would follow either the approval by the Queen of the Canadian Bill or the withdrawal of Canada from the Berne Convention. For this reason, therefore, as well as on the ground referred to above, the Board of Trade concur in the proposal of Lord Knutsford that a copy of the report should be sent to the Governor-General of Canada, and the views of his Ministers invited on the subject.

The Board of Trade are also of opinion that the report should, at the proper time, be presented to Parliament.

I am, &c.

HENRY G. CALCRAFT.

\* No. 31.

† No. 32.

No. 34.

LORD KNUTSFORD to LORD STANLEY OF PRESTON.

[Answered by No. 42.]

MY LORD,

Downing Street, June 30, 1892.

I HAVE to express my regret that it has not been possible for me to reply at an earlier date to your Despatch of the 19th of October 1891,\* in which you transmitted the address to Her Majesty from the Senate and Commons of Canada in Parliament assembled praying in effect for Imperial legislation which should explicitly confer upon the Parliament of Canada, the power to legislate on all matters relating to copyright, without regard to the statutes in force when the Parliament of Canada was established, and further, that notice might be given of the withdrawal of Canada from the Berne Copyright Convention.

2. I duly laid this petition before Her Majesty who was pleased to receive it very graciously, and to command that it should be taken into consideration by those of her Ministers whose Departments were more immediately concerned in the subject.

3. I communicated copies of the petition to the Secretary of State for Foreign Affairs and to the President of the Board of Trade, and after some discussion it was agreed to appoint a committee of leading officials of the three Departments, who should, with the assistance of one of the Parliamentary Counsel, consider the whole subject of Canadian copyright and report thereupon to Her Majesty's Government. The report of this Committee was unfortunately delayed by the illness of one of the members, but by the end of May it was in the hands of myself and my colleagues.

4. This paper will satisfy your Lordship and the Parliament of Canada that, though Her Majesty's Government have not as yet tendered advice to Her Majesty in respect of this petition, they have not failed to submit the question to a complete and exhaustive examination. It appears to them desirable, before any action is taken upon this report, that an opportunity should be given to the Dominion of Canada of once more considering the whole subject in the light thrown upon it by the researches of the Committee.

5. I therefore have the honour to transmit to you a copy of the Committee's report,† and to request you to communicate it to your Ministers and invite them to favour me with their views upon it.

6. I have also to request that you will lay this Despatch and its enclosures before the Parliament of Canada.

I have, &amp;c.

KNUTSFORD.

No. 35.

THE SOCIETY OF AUTHORS to COLONIAL OFFICE.

(Received December 10, 1892.)

[Answered by No. 39.]

DEAR MR. WINGFIELD,

13, Old Square, Lincoln's Inn,

December 9, 1892.

As Chairman of the Executive Committee of the Society of Authors I am desired to forward the enclosed opinion, lately taken by the Society, on the state of copyright in Canada, and to submit the same for the consideration of the Secretary of State.

The Committee has adopted, and is to be taken as making, on behalf of the Society, the representations set forth on the last two folios of the copy opinion.

Yours, &amp;c.

F. POLLOCK.

\* No. 25.

† Enclosure in No. 31.

## Enclosure in No. 35.

*Re* CANADIAN COPYRIGHT.

At present copyright in Canada, so far as concerns British authors, is governed by the Imperial Act (5 & 6 Vict. c. 44.) as modified by the Modern Reprints Act (10 & 11 Vict. c. 95) and the Canadian Copyright Act, 1875 (38 & 39 Vict. c. 53).

The effect of these Acts may shortly be stated as follows:—Under the Foreign Reprints Act and the Order in Council issued thereunder pirated copies of copyright works are admitted into Canada upon paying an *ad valorem* duty, but, as is well known, the duties are practically never collected, and the compensation supposed to be given to authors is wholly illusory. Under the Canadian Copyright Act, however, authors can, by republishing their works in Canada (whether simultaneously with or at any time after publication elsewhere) and registering the same, obtain Canadian copyright and exclude the operation of the Foreign Reprints Act.

The Act of 1875 is, I think, on the whole as favourable a one as can be expected having regard to the claims made on behalf of the Canadian public and publishers. It has not, however, as I believe yet been taken advantage of to any great extent by English authors, but the difficulty has, I believe, been, so to speak, a geographical one, that is to say, it has been impossible, owing to the position of Canada, either to make the pirated American editions pay duty under the Foreign Reprints Act or keep them out under the Act of 1875. It appears to me, however, that the recent United States Copyright Act should, to a great extent, remove this difficulty, and that English authors should now be able to obtain the benefit of the circulation of their books in Canada if the provisions of the Act 1875 can be maintained. At all events it is not, I imagine, likely that they will be able to obtain any more favourable terms. It remains to be considered how far the position of British authors will be prejudiced by the proposed Canadian statute if it is allowed to come into force.

The first question is whether the statute would operate as a repeal of the Imperial Act so far as regards Canada. In the absence of any provision to that effect in the Act authorising its proclamation, I do not think it would have that effect, but if a British author did not comply with the provisions of the Canadian Act his copyright under 5 & 6 Vict. c. 45 would be subject to the licensing provisions of the Canadian Act. The point should, however, be definitely settled by some express provision.

The next question is as to the terms upon which Canadian copyright is to be secured. These are (1) registration either before or simultaneously with first publication, whether in Canada or elsewhere, and (2) reprinting and republishing in Canada within one month. Both of these conditions appear to be opposed to the principles adopted by the Berne Convention and approved by the English Government. As to the registration it is to be observed that under the Act of 1886 registration in a Colony is recognised as sufficient to secure copyright throughout the British dominions, and it is hard to see why British authors should be required to register in Canada. At all events the same period should be allowed for registration as for republication, especially if copies of the work are to be deposited. As to reprinting and republishing it would probably be useless to attempt to do away with this condition altogether, but I think that an endeavour should be made to extend the period within which reprinting and republishing must take place, though, no doubt, the Canadians will justify themselves by reference to the provisions of the United States Copyright Act.

With regard to the licensing provisions of sections 3 and 4 it appears to me that if exclusive, instead of non-exclusive, licenses were to be granted many of the present objections to these provisions would be removed. The collection of the royalties would, I think, be much easier, whilst the publisher would be free from the danger of being undersold directly a work which had been brought out at considerable expense began to sell and he would, therefore, be more ready to bring out valuable and expensive works, which would be to the advantage of the public.

In any case, I think that the author should be able to take proceedings against the licensees if he is dissatisfied with the Government returns of royalties, but I am unable to suggest any means by which the due collection of royalties can be easily secured under a non-exclusive licensing system. Of course it should be seen that a provision similar to section 4 of 38 & 39 Vict. c. 53. prohibiting the importation of Canadian reprints into the United Kingdom is inserted in any Imperial Act authorising the proclamation of the Canadian statute. I can hardly imagine that the statute is intended to be retrospective,

but if it is not I do not understand to what sub-sections 3 and 4 of section 5 of the Act 1875, as amended by the proposed statute are intended to apply, and I think it would be as well that it should be made clear that the statute is not, in fact, retrospective. Another point I think which should if possible be made clear is that the author should be entitled, in the event of licenses being issued under section 3, to take proceedings against unlicensed reprints, I think he probably would be able to so as the matter stands, but the point is not free from doubt.

The above are the principal points which occur to me in connexion with the proposed statute, and if, as I understand is the case, the matter is still before Government the Society might I think properly make representations with regard to them. They may be summarised as follows:—

1. The proposed statute is entirely contrary to the provisions of the Berne Convention and the Imperial Act of 1886. If it is allowed to come into force it would seem that Canada must be excluded from the Convention. On principle, therefore, the statute should not be allowed, but if, for any reason, it is considered that exceptional legislation is required for Canada the following points arise in the interest of British authors ;
2. Copyright under 5 & 6 Vict. c. 45 should be expressly reserved subject only to the licensing provisions of the statute ;
3. Either registration in the United Kingdom should be sufficient, or the same period should be allowed, for registering in Canada as for republication ;
4. That one month is not a sufficient period to allow for the republication of works first published in the United Kingdom ;
5. That if a licensing system is to be introduced the licenses granted should be exclusive ;
6. That, in any case, authors should be entitled to take proceedings against licensees for royalties if dissatisfied with Government returns ;
7. That Canadian reprints should not be allowed to be imported into the United Kingdom ;
8. That it should be made clear that the statute is not retrospective, and ;
9. That authors should be expressly empowered to take proceedings in respect of unlicensed reprints.

J. ROLT,  
3, New Square, Lincoln's Inn, W.C.,  
22.11.92.

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No. 36.

COLONIAL OFFICE to FOREIGN OFFICE and BOARD OF TRADE.

[Answered by Nos. 37 and 38.]

SIR,

Downing Street, December 19, 1892.

WITH reference to previous correspondence respecting the question of Canadian copyright, I am directed by the Marquess of Ripon to transmit to you, to be laid before the Earl of Rosebery, a copy of a letter\* from the Society of Authors enclosing an opinion from Mr. Rolt on the Act of 1889.

Lord Ripon proposes if Lord Rosebery see the Board of Trade sees no objection to inform the Dominion Government of the representations of the Society as summarised at the end of Mr. Rolt's opinion.

I am, &c.

JOHN BRAMSTON.

No. 37.

BOARD OF TRADE to COLONIAL OFFICE.  
(Received December 23, 1892.)

Board of Trade (Railway Department), London, S.W.,  
December 21, 1892.

SIR,

I AM directed by the Board of Trade to acknowledge the receipt of your letter of the 19th instant,\* transmitting copy of a letter from the Society of Authors, enclosing an opinion from Mr. Rolt on the Canadian Copyright Act of 1889, and, in reply, to state, for the information of Lord Ripon, that there would appear to be no objection to a copy of this communication from the Society of Authors being forwarded for the information of the Canadian Government.

I am, &amp;c.

COURTENAY BOYLE.

No. 38.

FOREIGN OFFICE to COLONIAL OFFICE.  
(Received December 28, 1892.)

SIR,

Foreign Office, December 27, 1892.

I AM directed by the Earl of Rosebery to acknowledge the receipt of your letter of the 19th instant,\* enclosing a copy of a communication from the Society of Authors relative to the Canadian Copyright Act of 1889.

Mr. Rolt's opinion therein enclosed does not seem to have been based upon all of the considerations in regard to the operation of the Imperial Act of 1886 which are alluded to in the report of the Departmental Committee upon this subject, and his Lordship fears that if the representation of the Society of Authors were now communicated officially to the Canadian Government it might give rise to difficulty and misapprehension, not only as respects the legal issues involved, but also as to the exact position of Her Majesty's Government in the matter.

Lord Rosebery would therefore suggest, for the consideration of the Marquess of Ripon, that a copy of the report of the Departmental Committee might be communicated confidentially to the Society of Authors, with an intimation that it has been referred to the Dominion Government for their observations; that the representations of the Society shall be borne in mind in connection with future action; but that, before making any further communication on the subject to the Canadian Government, Her Majesty's Government desire to await their observations upon the report of the Departmental Committee.

I am, &amp;c.

T. H. SANDERSON.

No. 39.

COLONIAL OFFICE to the SOCIETY OF AUTHORS.

[Answered by No. 40.]

SIR,

Downing Street, January 3, 1893.

WITH reference to your letter of the 9th ultimo,† respecting the Canadian Copyright Act of 1889, I am directed by the Marquess of Ripon to transmit to you, for confidential communication to the Society of Authors, a copy of the Report‡ of an Inter-departmental Committee on the subject of the law in question which has been referred to the Canadian Government for consideration.

Lord Ripon would be glad to be informed whether, after perusing this report, the Society of Authors wish to add anything to the representation contained in your letter under reference.

I am, &amp;c.

EDWARD WINGFIELD.

\* No. 36.

† No. 35

‡ Enclosure in No. 31.

No. 40.

THE SOCIETY OF AUTHORS to COLONIAL OFFICE.

(Received February 9, 1893.)

[Answered by No. 41.]

4, Portugal Street, Lincoln's Inn Fields, W.C.,

MY LORD.

February 8, 1893.

I BEG to thank your Lordship for forwarding, for the consideration of the Executive Committee of the Society, the Inter-Departmental Report on the question of Canadian Copyright, which has been placed in the hands of the Society's advisers and fully considered. I now, on behalf of the Committee of the Society, beg to inform your Lordship that as the matter at present stands the Committee do not desire to make any further suggestions.

On behalf of the Committee I beg to tender you our sincere thanks for the courtesy you have shown the Society in the matter in consulting them, and to express the hope that it may be consistent with the interests of the public service to acquaint the Society with the answer of the Canadian Government when it is received.

I am, &amp;c.

FREDERICK POLLOCK,

Chairman.

No. 41.

COLONIAL OFFICE to the SOCIETY OF AUTHORS.

SIR,

Downing Street, February 17, 1893.

I AM directed by the Marquess of Ripon to acknowledge the enclosure of your letter of the 8th instant,\* on behalf of the Society of Authors, relative to the question of Canadian copyright, and to state that the desire of the Society to be informed of the answer of the Dominion Government will be borne in mind.

I am, &amp;c.

EDWARD WINGFIELD.

No. 42.

THE EARL OF ABERDEEN to the MARQUESS OF RIPON.

(Received February 28, 1894.)

MY LORD,

Government House, Ottawa,

February 10, 1894.

My Ministers have had under consideration your Lordship's Despatch of the 30th June 1892,† transmitting the report of the Committee appointed to consider the petition of the Canadian Parliament praying that it might be granted wider powers of legislation as regards copyright, and that notice might be given of the withdrawal of Canada from the Berne Copyright Convention, and the approved Minute of Council of which I have the honour to enclose a copy, received by me to-day, contains an expression of their views upon this Despatch.

Your Lordship will observe that Ministers consider that nothing contained in the report is likely to change their opinion as to the propriety of notice being given, with the least possible delay, of the withdrawal of Canada from the Berne Convention, and further press their request that such notice be given.

With regard, however, to the question of the enactment of Imperial legislation to give greater freedom to the Canadian Parliament in dealing with questions of copyright, a further report is promised by the Government.

I have, &amp;c.

ABERDEEN.

\*No. 40.

†No. 34.

## Enclosure in No. 42.

CERTIFIED COPY of a REPORT OF A COMMITTEE of the Honourable the PRIVY COUNCIL, approved by his Excellency the GOVERNOR-GENERAL IN COUNCIL, on the 23rd January 1894.

The Committee of the Privy Council have had under consideration, a Despatch, hereto attached, dated 30th June 1892,\* from the Right Honourable the Principal Secretary of State for the Colonies, relating to the address to Her Majesty from the Senate and Commons of Canada praying for Imperial legislation which should explicitly confer upon the Parliament of Canada the power to legislate on all matters relating to Copyright, without regard to statutes in force when the Parliament of Canada was established; and praying further that notice might be given of the withdrawal of Canada from the Berne Copyright Convention.

The Minister of Justice, to whom the matter was referred, observes that the Despatch now under consideration states that the petition was ordered by Her Majesty to be taken into consideration by those of Her Majesty's Ministers whose Departments were more immediately concerned in the subject, and that a committee had been appointed, of leading officials of the Department of Foreign Affairs, of the Department of the Colonial Office, and of the Board of Trade, to consider, with the assistance of one of the Parliamentary Counsel, the whole question of Canadian Copyright and to report thereon.

The Minister also observes that the Despatch further stated that, in the view of Her Majesty's Government, it appeared to be desirable, before any action should be taken upon this report, that an opportunity should be given to the Dominion of Canada once more to consider the whole subject in the light thrown upon it by the researches of the Committee, and the report was transmitted to his Excellency along with the Despatch.

The Minister further observes that, having carefully perused the report of the Committee referred to, he is of opinion that nothing contained therein is likely to change the opinion of your Excellency's advisers as to the propriety of the request which they have pressed on several occasions, and which the Parliament of Canada has, on more than one occasion, unanimously endorsed, namely the request that notice should be given, with the least possible delay, of the withdrawal of Canada from the Berne Convention.

The Minister deems it unnecessary to remind your Excellency that Canada has been repeatedly assured that her continuance in any treaty arrangement of this kind would be subject to her desire to withdraw at any time on giving the prescribed notice, and, now that the policy of Canada has been so firmly established and repeatedly pressed upon Her Majesty's Government, both by Parliament and by your Excellency's advisers, he (the Minister) recommends that your Excellency be requested to remove Her Majesty's Secretary of State for the Colonies to cause such notice to be given without further delay.

The Minister states that he will respectfully submit some observations upon the report of the Committee before referred to on the other subject embodied in the address of the Canadian Parliament to Her Majesty, namely the adoption of legislation in the Parliament of the United Kingdom giving greater freedom to the Parliament of Canada in dealing with the subject of copyright, but he submits that, in the meantime, the notice of withdrawal from the Berne Convention should in any case be given.

The Committee advise that your Excellency be moved to forward a certified copy of this minute, if approved to the Right Honourable the Principal Secretary of State for the Colonies.

All of which is respectfully submitted for your Excellency's approval.

JOHN J. MCGEE,  
Clerk of the Privy Council.

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\* No. 34.

No. 43.

THE EARL OF ABERDEEN to the MARQUESS OF RIPON.  
(Received March 9, 1894.)

Government House, Ottawa,  
February 20, 1894.

MY LORD,

WITH reference to previous correspondence relative to the question of copyright in Canada, I have the honour to forward herewith copy of an approved Minute of the Privy Council, which I have this day received, submitting a report by the Minister of Justice in which he recapitulates the history of the question and again urges that steps be taken by Her Majesty's Government to remove the restrictions which prevent the Canadian Parliament dealing freely with matters relating to copyright.

I have, &amp;c.

ABERDEEN.

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Enclosure in No. 43.

CERTIFIED COPY of a REPORT OF A COMMITTEE of the HONOURABLE THE PRIVY COUNCIL approved by His Excellency the GOVERNOR-GENERAL IN COUNCIL, on the 7th February 1894.

The Committee of the Privy Council have had under consideration the annexed report of the Minister of Justice, relating to copyright in Canada.

The Committee, concurring therein, advise that your Excellency be moved to forward a certified copy of this Minute, if approved, and the appended report and annex to the Right Honourable the Principal Secretary of State for the Colonies.

All of which is respectfully submitted for your Excellency's approval.

JOHN J. MCGEE,

Clerk of the Privy Council.

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TO HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL,

\*1. The undersigned, having had under consideration a Despatch from Lord Knutsford to your Excellency's predecessor, dated 30th June 1892, in reply to a Despatch of his Excellency Lord Stanley of Preston of the 19th October, 1891, in which his Excellency transmitted an address to Her Majesty from the Senate and Commons of Canada, praying for Imperial Legislation which should explicitly confer upon the Parliament of Canada the power to legislate on all matters relating to copyright in Canada without regard to statutes in force when the Parliament of Canada was established, etc., etc., has the honour to submit the following observations upon the report which accompanied the Despatch of Lord Knutsford, and which had been made by departmental representatives of the Colonial Office, Foreign Office, Board of Trade and Parliamentary Counsel's Office to the Right Honourable Sir Michael Hicks Beach on the subject of Canadian copyright.

2. It is, no doubt, true, as stated in the third paragraph of the report of the Committee, that from the point of view of British authors and publishers, the Imperial statute of 1842 was satisfactory to those authors and publishers; because it gave the British author and publisher a monopoly, by copyright, extending over the Sovereign's dominions for 42 years from the first publication, or seven years from the author's death. It may be regarded, indeed, as a continuance, for their benefit, of the system which was based on the idea that the Colonies were to be preserved only for the benefit of the producers in the British Islands, and that the inhabitants of those Colonies had no rights of self-government or otherwise which were inconsistent with the interests of British producers.

3. The Colonial publisher and the Colonial reader, however, had every reason to be dissatisfied with the enactment of 1842, and it is not to be wondered at that their representatives made very emphatic protests. Those protests are enumerated and referred to in the letter of the undersigned to Lord Knutsford, dated 14th July 1890, which forms an appendix to this report.

4. The protests and the agitation for redress continued until 1846, when Mr. Gladstone gave warning to the publishing trade in England that they must be induced "to modify

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\* The paragraphs have been numbered to facilitate reference to the comments of the Copyright Association. See *post* No. 82.



“ any exclusive view which might still prevail in regard to this important subject ;” and shortly afterwards a report was made from the Colonial Office to the Board of Trade intimating the decision of the Secretary of State for the Colonies, Earl Grey, that “ after the repeated remonstrances which had been received from the North American Colonies on the subject of the circulation there of literary works of the United Kingdom, he proposed to leave to Colonial legislatures the duty and responsibility of enacting laws which they should deem proper for securing the rights of authors and the interests of the public.”

5. Earl Grey requested that the Board of Trade should be moved to take “ such measures as might be expedient for submitting to Parliament, at the ensuing session, a Bill authorising the Queen to extend the Royal sanction to any Colonial law or ordinance which might be passed respecting copyright, notwithstanding the repugnancy of any such law or ordinance to the copyright law of the United Kingdom.”

6. The circular of Earl Grey to the Governors of the North American Colonies, which followed, dated November 1846, announced that this was settled as the policy of Her Majesty's Government, and the Governors were informed that a measure to carry out that suggestion would be introduced at the ensuing session. The full text of this circular will be found in the appendix, and it is remarkable that the assurance thus given, of the policy of Her Majesty's Government towards the North American Colonies, remains unfulfilled to this day, in consequence, it must be assumed, of the influence which two classes—the authors and the publishers in the United Kingdom—were and have been able to exercise with regard to the legislation which had been promised, in relation to a matter so important to Her Majesty's Colonies.

7. In paragraph 6 of the report, the Committee thus refer to the pledge given by Her Majesty's Government to the Colonies :

“ It was, however, eventually determined not to legislate in accordance with the terms of Lord Grey's Despatch, but, instead, to pass the Imperial Act which bears the short title of the ‘ Colonial Copyright Act of 1847 ’ but is commonly known as ‘ The Foreign Reprints Act.’ ”

8. It might be supposed, from this mode of stating the case, that the “ determination not to legislate in accordance with the terms of Lord Grey's Despatch ” was a determination arrived at as the result of an understanding with the Colonies, that this measure should be accepted as a substitute for the concession which Lord Grey had promised. This, however, does not appear to have been the case. It was a measure of temporary and partial relief and it can hardly be supposed that a determination was arrived at by Her Majesty's Government, to abandon or repudiate the pledge which had been so formally given, or even to substitute for what had been promised a measure which, while it might satisfy present wants, fell vastly short of what had been promised. The “ Foreign Reprints Act ” was, no doubt, adopted merely as a measure of temporary relief and until the wider measure could be obtained.

9. Paragraph 6 of the Committee's report states that the Act “ was satisfactory from the point of view of the Canadian reader, because it enabled him to obtain cheap reprints of British copyright books.” It is true that the “ Foreign Reprints Act ” was, as stated above, a measure of relief to the Canadian reader, for the reason given in the paragraph quoted. The legislatures of the Colonies were willing to wait a reasonable time for the fulfilment of Earl Grey's promise, and in the meantime to accept the temporary expedient, by which the monopoly which excluded British literature from the borders of the Colonies, was relaxed in favour of an impost for the benefit of those who had a (statutory) right to that monopoly. In short the Imperial Parliament, finding the monopoly so great a grievance, obliged the holders of it to compound for money compensation which the Colonist would pay without much expression of discontent, even if it involved the denial to his country, for a time, of the rights of self-government which should have been considered at least as important as the (statutory) rights of copyright holders, and which had been promised in the plainest terms.

10. It was quite obvious, however, that the Colonies would not long rest satisfied with such a system. The growth and development of their publishing interest would have put an end to acquiescence in the scheme, even if the legislatures had been willing to continue to be denied their proper powers and to be tax-gatherers for a privileged class outside the country.

11. In March, 1870, the British copyright owners, not being satisfied with the proceeds of the taxation on foreign reprints, and desiring their monopoly restored to its full vigour, demanded the repeal of the Foreign Reprints Act.

12. The Copyright Commission of 1876 followed, and in their report of 1879 it was stated that copyright holders had only received, as the result of their taxing scheme, from

nineteen Colonies which had taken advantage of the Act, 1,155/ 13s. 2½d. ; but it is to be observed that of this sum 1,084/ 13s. 3½d. was received from Canada, leaving about 71l. as the contribution from the other eighteen Colonies. Probably the same proportion has been continued since. Great pains have been taken to collect the tax for the benefit of copyright holders, notwithstanding the belief has been growing, from year to year, that the present state of the law is odious and unjust. The copyright holders of the United Kingdom have made suggestions from time to time for improvements of the method of collecting this tax, in order that the proceeds may be augmented, and the Government of the Dominion has always made the collections vigilantly and in good faith. They are willing even to adopt improved methods of collection, but they can only offer to do so as part of an improved scheme of copyright, such as that embodied in the Canadian Act of 1889 and by way of an amendment to some such enactment as that, to come into force concurrently with such Act.

13. While, as has been stated, the "Foreign Reprints Act" gave a measure of relief to the Canadian reading public, it had the effect of creating a monopoly for the publishers of the United States and of preventing the publishing business of Canada from attaining dimensions such as might reasonably have been expected in a country where the whole population is a reading population, and where the practice has always been, with few exceptions, compared with European countries, for the people to buy the books which they read. In spite of this disadvantage the publishing interest has grown very considerably. It has been represented in some former discussions on this question as being small and unimportant. All that seems necessary to be said upon that subject, for the present, is that it is small in comparison with what it should be, and in comparison with what it would be under a proper adjustment of the copyright laws.

14. It is noted in paragraph 14 of the Committee's report that the Senate of Canada adopted an address to Her Majesty in 1868, urging the change which Lord Grey had promised, that the answer thereto, on the 22nd of July 1868, was merely that the question was too important, and involved too many questions of imperial policy for legislation at that session of Parliament, and it was then intimated that negotiations with the United States on the subject of copyright required some delay in dealing with the Colonies with regard to that interest.

15. The part which negotiations with the United States have played in this discussion with Canada will be referred to hereafter, but it is apparent that for more than twenty years these negotiations have been made use of as a reason for postponing the requests, admitted to have been reasonable, which were presented by the Dominion of Canada and that when an arrangement was eventually made with the United States, the publishers of that country received the benefit of the British copyright monopoly of the Colonies, with rights reserved in their favour which were refused to Canada, and the conclusion of that arrangement with the United States is now suggested by the Committee, whose report is under review, as a new reason why the demands of Canada should not prevail, because it would interfere with the United States copyright holders who have been presented with the monopoly of Canada for the sale of their publications.

16. Pursuing the narrative, however, it is important to note that the assurances which have been received by Canada from time to time express sympathy with the Colonial interests; and that after more than twenty years of inquiry, consideration, discussion, sympathy and promises, it was stated by the Lords of Trade, with reference to that address of the Senate, that the subject was "a matter that called for inquiry" and that "an endeavour should be made to place the general law on copyright, especially "that part of it which concerned the whole continent of America, on a more satisfactory footing."

17. It may be observed here that by the arrangement with the United States "the general law of copyright, in so far as it concerned \* \* \* \* continent of America," was indeed put on a footing more satisfactory as regards the British author and publisher and the United States publisher, but that that part of the continent of North America which bears allegiance to Her Majesty has received no consideration in the improvement of the law.

18. The Duke of Buckingham and Chandos on the 31st July 1868, sending his formal reply to the Despatch accompanying the address of the Senate, made the admission, which was not very remarkable at that stage of the discussion, that "the law of copyright generally might be a very fit subject for future consideration."

19. The Canadian Government were of the same opinion, and on 9th April, 1869, they transmitted another representation on the subject, but the Board of Trade considered that the Canadian proposal should not be adopted immediately, because nothing could be done for Canada unless the United States were a party to the arrangement, and that

“whatever protection should be given to authors on one side the St. Lawrence must, in order to be effectual, be extended to the other.” The equivalent proposition would seem also to be implied, viz., that whatever protection might be given to publishers on one side the St. Lawrence must be extended to the other. Her Majesty’s Government, however, have not yet carried out those propositions because they have agreed to an arrangement by which the British author or publisher, in order to get the benefit of copyright protection in the United States, is obliged to print his book from type set in the United States, and it yet withholds from Canada the concession of allowing a Canadian publisher to reprint at all, even from plates imported from Great Britain, and on payment of a tax levied in favour of the copyright holder on every copy of the publication.

20. Canada was assured, however, by Earl Granville’s Despatch of the 20th October 1869, that at the ensuing session of Parliament copyright would be permitted on publication in the Colonies, a concession of very slight and doubtful importance. When, under the Berne Convention, a concession in that direction was given, the Colonial author or publisher received his slight privilege only in common with the authors and publishers of all the other countries included in that convention.

21. Attention is again called to the report of the Minister of Finance of Canada in 1870, followed by the request of Lord Kimberley on the 29th of July 1870, that the views of the Canadian Government might be again forwarded in order that Her Majesty’s Government might give them consideration before the ensuing session—and to the report from the Ministers of Finance and of Agriculture, dated 30th November 1870, in which those views were once more set forth. Consideration seems not to have been given to the information thus asked for and obtained, and on the 14th of May 1872, the views of the Canadian Government were again set forth in a report of the same Ministers which was adopted and transmitted on the 14th of the same month.

22. After thirty years of reiterated complaints the Canadian Government felt called upon to declare the existing system “wholly indefensible,” and to state that the Canadian publishers were being “treated with the greatest injustice.” The report of the Ministers stated that it had “long been the custom of owners of British copyright to sell to American publishers advance sheets of their works, and when Canadian publishers had offered to acquire copyright in Canada by purchase, they had been told that the arrangements made between the British and American publishers were such as to prevent negotiations with Canadians.”

23. In the same year a Copyright Act was passed by the Canadian Parliament and forwarded for Her Majesty’s assent. It was based on the same principles as the Canadian Copyright Act of 1889. The assent was withheld.

24. The undersigned does not propose, in the course of these observations, to detail at length the various negotiations which have taken place. They will be found more fully stated in the appendix hereto. Attention is called to them in this place chiefly because many which seemed to the undersigned to be of importance are not mentioned in the report of the Committee, and because it seems important to notice that from the commencement of the agitation in 1842 down to the present year, the representations from the North American Colonies have met with the same response from Her Majesty’s Government, namely, an admission that grievances existed as stated, promise of redress—followed by expressions of determination to consider the subject and a declaration that the measure proposed by the Parliament of Canada to lessen the grievances was beyond the powers of that Parliament and must be authorised by an Act of the Imperial Parliament in order to be effectual.

25. The Despatch of Lord Carnarvon, dated 15th June 1874, is an illustration of the progress which the agitation had made since Her Majesty’s Government, in 1846, with a full knowledge of the whole subject, had promised to confer full legislative powers at the ensuing session. His Lordship stated then (twenty-eight years after Lord Grey’s circular Despatch) that he was aware “that the subject of Colonial copyright had long been under consideration,” that he was ready “to co-operate” and that he had “a confident hope” that Her Majesty’s Government might, “without difficulty be able to agree on the provisions of a measure which, while preserving the rights of owners of copyright works” in the United Kingdom “under the Imperial Act, would give effect to the views of the Canadian Government and Parliament.”

26. One of the most important points in the narrative is that mentioned in paragraph 21 of the Committee’s report, namely, the appointment of a Royal Commission on Copyright in 1876, and also the report of that Commission in 1879. It appears necessary to point out that the report of that Commission recommends the adoption of the principle on which is based the Canadian Copyright Act of 1889, namely, the establishment of a

licensing system for republications of copyright works in the Colonies and the collection of a tax in favour of the copyright holder as a compensation.

27. In pursuing the course of discussion followed by the Committee, whose report is under review, it seems proper to make some reference to that branch of the subject which refers to copyright arrangement with other countries; and first to notice the position of your Excellency's Government on the subject of the Berne Copyright Convention.

28. At the outset, however, it may be well to state the ground upon which the Canadian Government base their request for the withdrawal of Canada from that convention. When assent was given, on the part of the Canadian Government, to be included in that convention, one of the considerations which prevailed was the confidence in the assurances given by Her Majesty's Government with regard to the amelioration of the law of copyright as it affected Canada, notwithstanding the great delay which had occurred. But the principal consideration was the fact that Canada could withdraw from the convention on a year's notice to that effect being given to the countries included in the convention.

29. The Canadian Government afterwards formally requested Her Majesty's Government to give notice of the withdrawal of Canada. That request not having been complied with, an address of both Houses of Parliament to Her Majesty was unanimously passed in the session of 1891, requesting that the notice be given. Recently your Excellency's Government has forwarded a renewed request that the notice be given without further delay. The undersigned respectfully submits that the reasons which induce persistence in this determination to withdraw from the convention are in the judgment of the Parliament and Government of Canada.

30. Parliament has complete cognizance of Canadian interests in such matters and has unanimously endorsed the request of your Excellency's advisers that notice should be given.

31. The statement was made by the undersigned, in a previous report, that the condition of the publishing interest in Canada was made worse by the Berne Convention. That statement is adhered to. The monopoly which was in former years complained of in regard to British copyright holders is now to be complained of, not only as regards British copyright holders, but as to the same class in all countries included in the Berne Copyright Union. Canada is made a close market for their benefit, and the single compensation given by the convention for a market of five millions of reading people is the possible benefit to the Canadian author, whose interests seem not to have been thus cared for on account of a very high estimate of their value, because the Committee whose report is under review describe the Canadian author as "belonging rather to the future than to the present." Without accepting this estimate as quite accurate it may at least be said that the Canadian Parliament may be trusted to care for the interests of Canadian authors. The Berne Convention had in view considerations of society which are widely different from those prevailing in Canada. In Europe the reading population in the various countries is comparatively dense; in Canada a population considerably less than that of London is dispersed over an area nearly as large as that of Europe. In the cities of Europe, especially in Great Britain, the reading public is largely supplied from the libraries, while, in Canada, as a general rule, he who reads must buy. In European countries the reading class forms but a fraction of the whole population, while in Canada it comprises nearly the whole population.

32. If reasons against the continuance of Canada in the convention were called for, many would suggest themselves, but the undersigned does not understand that your Excellency's Government is called upon to give those reasons or to present an argument to justify the determination of Canada to withdraw from the convention.

33. No enactment in Canada to give effect to the Berne Convention has ever been passed, although some enactment would be necessary in order to make the system operative and effectual here.

34. As regards what is called the "arrangement" made between Her Majesty's Government and the United States, some observations seem specially called for, in view of the position taken by the Committee whose report is being considered. In March 1891, Congress passed the present copyright law. That law gives copyright in the United States to any author, whether a citizen of the United States or a subject of a foreign State, on condition that two printed copies of the book, printed from type set within the limits of the United States, be deposited (in accordance with regulations prescribed), on or before the publication of the book. It is necessary, however, in the case of the subject of a foreign state, to show that his State permits citizens of the United States

to have the benefit of copyright on the same terms as her own citizens. That requirement, of course, is easy of fulfilment in the case of Great Britain, for the Copyright Act of 1842 permitted foreigners to obtain copyright, running not only in the United Kingdom but throughout Her Majesty's dominions, on mere publication in Great Britain, without any condition as to the type being set within the Queen's dominions.

35. It seems, from the Committee's report, to be considered that Lord Salisbury, on the 15th June 1891, made an agreement with the United States which is an obstacle in the way of the Canadian request for improved copyright legislation being granted. If such could be supposed to be the case the contention of Canada in this respect would present a far more serious ground of complaint than has been yet stated. The contention would be, that after promises of redress bad for many years remained unfulfilled and at last fulfilment postponed on the explanation that such redress would be considered in negotiations for an international arrangement with the United States, Canada would now have to be informed that her request cannot be entertained or considered any longer, because the international arrangement with the United States precludes any consideration of her interests.

36. The undersigned submits, however, that such is not a correct statement of the facts, or a reasonable conclusion from them. Mr. Lincoln, the United States Minister at London, appears to have asked information from Lord Salisbury as to the state of the copyright law in the United Kingdom. The reply of Lord Salisbury was that an alien, by first publication in any part of Her Majesty's dominions, could obtain the benefit of British copyright and that contemporaneous publication in a foreign country did not prevent the author from obtaining copyright in Great Britain, that residence in Her Majesty's dominions was not a necessary condition, and that the law of copyright in force in all British possessions permits citizens of the United States of America to have the benefit of copyright on the same basis as British subjects.

37. It is submitted that in making this statement Lord Salisbury was merely stating what he believed to be the condition of the law of copyright at that time. He was not making any treaty nor any arrangement with regard to copyright, although, probably, for convenience of expression the term, "arrangement with the United States" has been used in the report of Committee, and also in course of these observations. The Committee in their report seem to treat Lord Salisbury's answer (as to the condition of the existing law), as an agreement and almost as equivalent to an undertaking that the law should never be changed. Otherwise it is difficult to understand such expressions as are contained in paragraph 51: "The Act of 1889" (meaning the Canadian Act), "if confirmed by Her Majesty's Government, after the assurance given to the Government of the United States in 1891, would give rise to misconception and misunderstanding." "Of course if Canada were to withdraw from the operation of the Act of 1886, and still more if she were allowed to withdraw from the Act of 1842, there would be not merely a formal, but a substantial inconsistency between her legislation and Lord Salisbury's declaration."

38. It is not suggested that Lord Salisbury's declaration was that the law should not be changed, but that seems to be implied. If such is indeed to be inferred from Lord Salisbury's reply to Mr. Lincoln it would be well to inquire how long his declaration was intended to continue in force or is to be construed as being in force? Is it possible that the Convention of Berne, which was to endure until a year after denunciation, in so far as Canada was concerned, was intended by Lord Salisbury to be made perpetual in its application to Canada, by his making a statement of the law of the United Kingdom to Mr. Lincoln?

39. It seems perfectly obvious, notwithstanding the contrary view suggested by the report of the Committee, that Lord Salisbury merely informed Mr. Lincoln that on the 16th of June 1891, the first condition above set forth, in the United States Copyright law, was complied with by the state of British law at the time. Lord Salisbury's object was to show Mr. Lincoln that Great Britain permitted citizens of the United States the benefits of copyright on substantially the same basis as to her own citizens. The Canadian Government and Parliament ask for no other condition of affairs; and Lord Salisbury's statement to Mr. Lincoln will still be good, and the reasonable requirements of the United States Government will still be satisfied if the Canadian Act of 1889 be ratified, because American holders of copyright in Great Britain will still be on the same footing as British copyright holders.

40. Before the so-called "arrangement with the United States" was made, in a letter which the undersigned had the honour to write to Lord Knutsford, on the 14th of July 1890, it was suggested, as is quoted in paragraph 43 of the Committee's report:

"(1.) 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."

"(2.) 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."

41. This prediction has been abundantly fulfilled since the passage of the United States Copyright Act. The United States publishers now insist in making their arrangements with British authors and publishers, on a condition that Canada be included in the territory disposed of. Furthermore, the American purchasers of British rights refuse to Canadian publishers any arrangement for the publication of reprints in Canada. In this way the copyright holder outside of Canada not only enjoys in Canada a monopoly which the Copyright Act of 1842 gave him, but can, and does, sell to foreigners that monopoly in Canada, and the foreign purchaser thus acquires the right, under the Statute of 1842 and the Berne Convention Act of 1866, to lock the Canadian presses in order that his own may be kept in operation to supply Canadian readers.

42. It should be observed that by the Canadian Copyright Act of 1889, Canada asks less than the United States has obtained. The Congress of the United States has demanded that, before a British subject can obtain copyright in the United States, his book shall be printed from type set within the limits of the United States. Great Britain not only accedes to this demand, but permits a citizen of the United States to obtain copyright of his work in England, on production of his work there, printed on the type set in the United States, and thus the United States publisher at the same time secures copyright in both countries for a book produced from American type. The Canadian Act would permit type to be set in England and the plates imported, and on printing therefrom, copyright would be granted in Canada, if the printing were done within one month of the original publication elsewhere; but failing such publication, the British copyright holder would be secure in his ten per cent. royalty if the book should be republished (under license) in Canada.

43. In view of this state of affairs it is not accurate to say, as seems to be suggested in paragraph 54, section 4 of the report under review, that "The present demand for legislation on the lines of the Canadian Act of 1889, appears to come, not from the Canadian reader or author, but from the Canadian publisher and printer, who feel severely the competition of rivals in the United States, and wish to protect themselves by excluding their rivals' wares."

44. What the Canadian publishers principally complain of, under the present state of affairs, is that they are not allowed to compete with publishers of the United States, inasmuch as the British copyright holders dispose of their rights to American publishers on condition that the latter shall have a monopoly of the Canadian market.

45. Another statement contained in the same paragraph of the report (section 6), indicates a want of information as to the facts, viz., the statement "That the effect of the recent American Act would not be to increase the inducement to American publishers to reprint British books. Before the Act they could reprint any such books freely; since the Act they must make arrangements with such authors as take advantage of the provisions of United States legislation." The fact is that English books are eagerly sought for by United States publishers. They can afford to pay high prices in view of the fact that the market of Canada is included in their purchases. The English authors are induced, also, to seek purchasers in the United States, in order to obtain copyright there and to get their books printed from United States type, which is a condition imposed there, although not imposed in Britain on the United States author when he seeks copyright protection throughout the British Empire.

46. It is this enormous disadvantage, and not the competition of publishers in the United States, that Canada complains of, and it cannot correctly be alleged that the Canadian publishers "are undersold by competitors who have the advantage of larger capital and a larger market."

47. The Committee have devoted a considerable portion of their report to a statement of the objections to the confirmation of the Canadian Act of 1889. The undersigned forbears, at the present time, from entering into a discussion of the legal views on which the necessity for an Imperial statute to confirm the Canadian Act depends. They have been fully set out in a report which he made in August, 1889. To the arguments therein stated he still adheres, but when it was made apparent, in the reply which was

received to that report, that the Colonial Office had adopted a different opinion and held that an Imperial statute was necessary, the attention of the Canadian Government and Parliament were immediately applied to the task of showing Her Majesty's Government that, for every reason which could be drawn from the assurances of the past, such an enactment should be speedily given. It was this branch of the subject that the undersigned had the honour to present, in his letter of the 14th July 1890, written at Lord Knutsford's suggestion, and it is to this branch of the case that the present observations are intended principally to be applied.

48. It is proposed, therefore, to consider the various objections which are stated by the Committee in their report.

The first objection is this: "It would involve abandonment of the policy of international and imperial copyright which Her Majesty's Government adopted and to which Canada assented only six years ago."

49. It is denied that the provisions of the Canadian Act would involve the abandonment of that policy, even in so far as Canada is concerned, because the copyright holder would still be compensated by the royalty instead of the customs duty. As regards the assent of Canada of six years ago to the Berne Convention, Canada's right to withdraw from the convention on a year's notice, was placed on the face of the treaty and she would not have consented to enter without that condition. The right has never been questioned and a request that Her Majesty's Government should give notice of Canada's withdrawal has been most distinctly and emphatically made. With a knowledge of these facts the Committee's report, in paragraph 50, uses these words: "If Canada presses for withdrawal from the Berne Convention her request cannot well be refused."

50. The undersigned ventures to express the hope that no doubt will be entertained on this point. By an Order in Council, Canada, years ago, asked for the notice to be given. By an address of both Houses of Parliament she repeated that request in the most formal manner to Her Majesty. By a Despatch of recent date your Excellency's Government urged that the notice be given without any further delay; and, in case there should be any uncertainty on the subject, it is now asserted that "Canada presses for withdrawal from the Berne Convention."

51. The next objection stated is that "It would be at least open to the charge of being inconsistent with the declaration as to the law of the United Kingdom and the British possessions which was made to the United States by Lord Salisbury, on the faith of which the United States admitted British authors to the benefit of their copyright law." This seems so fallacious as to call for no further comment than has been made upon it in an earlier portion of this report. It is impossible, in the view of the undersigned, that Lord Salisbury's statement of the law should be construed as a promise for all time, or for any time. But if, by this statement, it is intended to be inferred that the United States will hold at such high value the market of Canada, which they are now able to control, as to refuse copyright to British authors if that market be not continued to them, the demand for redress on the part of Canada will be more emphatic than ever, because the inquiry will arise whether it is proposed to place an important commercial interest of Canada at the disposal of a privileged class in Great Britain to be bartered for privileges to that class in a foreign country. It will be necessary to consider at once how long the market of Canada is to be thus controlled, and whether it is to be finally settled that Canada is to be placed at a disadvantage as compared with other countries in her neighbourhood because her people have retained connexion with the Empire, which they have so long done from very different motives than those of self interest.

52. The next objection is that the confirmation of the Canadian Act "would be inconsistent with the policy of making copyright independent of the place of printing" — a policy — which Her Majesty's Government have for many years been urging the United States to adopt."

53. It is well known that the United States have never shown a disposition to adopt any such policy. It is difficult to suppose that any well-informed person entertains any expectation that they will do so. Her Majesty's Government evidently had no such view when, by Lord Salisbury's "arrangement" with Mr. Lincoln, they conceded to United States citizens copyright privileges throughout the British Empire, without that policy being adopted on the part of the United States, but when, on the contrary, the United States emphatically refused to adopt it. After that arrangement, it is difficult to understand what reason could be suggested to Congress for abrogating a condition (printing in that country) which protects the labour of the United States, to the manifest disadvantage of British labour of the same kind, and yet results in no denial to United

States citizens of the privileges which British subjects have. Surely it would not now be urged that Canada should any longer have the granting of her request postponed for the imaginary reason that some better arrangement may be made with the United States, of which there is not the slightest probability, and which would be of very doubtful value, even if obtained, as far as Canada is concerned.

54. A further objection alleged against the Canadian Act of 1889 is that "it would impair the right in Canada, of British authors," (meaning, of course, British copyright holders), "by whom the Canadian market is principally supplied."

55. This is a statement of the most doubtful accuracy. The Canadian Act would secure to British copyright holders revenues which would be a hundred-fold that now received from Canada, by reason of the collection of the stamp duties on Canadian reprints being substituted for customs collections on foreign reprints. If the British author would sell his copyright in Canada (which he rarely does now, because the purchaser in the United States demands of him that Canada shall be thrown into the bargain) he would find the product of his copyright greatly enhanced under the Act of 1889. It is doubtful, at the present time, whether the United States purchaser pays anything additional to the British author in consideration of the market of Canada, but, certainly, if the market of Canada were purchased by those understanding the trade of this country, the price which the author would receive for the Canadian market would be greater than it now is. If the holder of copyright did not sell the Canadian market he would receive the price from the United States purchaser plus the additional revenue collected under the license in Canada.

56. One widely-read author is known to have sold his right to a great publishing house in the United States. He refused to sell, at that time, the Canadian market to a Canadian purchaser. That condition was exacted of him by the publishing house in the United States which became his purchaser. Subsequently an arrangement was made with the author by a Canadian publisher, by which the latter secured the Canadian market by paying a larger sum for the Canadian right than the United States publishing house had paid for the same privilege in the United States and Canada together.

57. In any event Her Majesty's Government should be asked to consider whether the rights of British copyright holders, created under the Statute of 1842, are to continue to be set up as a bar to the rights of the Canadian Parliament and Canadian people, after so repeated a recognition of the fact that the creation of these privileges had become a grievance in Canada, and so long after promises and assurances had been given that that grievance would be redressed. If so it is exceedingly difficult to understand many of the expressions which have been continually made use of in Imperial Despatches for the last fifty years.

58. The report of the Committee goes on to state an opinion that "It is doubtful whether the Canadian reader has, under existing circumstances, any ground of complaint at all." That opinion the undersigned cannot concur in. Even when foreign reprints were abundantly produced, that is to say before the passage of the American copyright law, the Canadian reader was obliged to pay a tax for the benefit of the copyright holder which was collected by the customs officers in Canada. That tax was not very burdensome, because the reprints were published at a very low price and the duty was an *ad valorem* impost on the wholesale importation. The Canadian reader is not now in so good a position, because of the generosity of Her Majesty's Government towards the United States citizens which has given the citizens of that country a monopoly of the Canadian market not only for reprints of the British works which they continually acquire the copyright of, and which the Canadian publisher cannot acquire, but for all United States publications as well. The result of this is that new books have doubled in price in Canada within the last three or four years, and there is a prospect of further advance.

59. The report of the Committee goes on to say that "It is the British author and publisher who have a right to complain of the Foreign Reprints Act." On behalf of Canada it is denied that the British author and publisher have reason to complain because they are not permitted, besides locking the Canadian press, to banish British literature from Canada by seizing it in the customs houses, unless it shall come in the form of a British edition which could not be sold in Canada, save in very small numbers. The British author would have no right to complain of the Canadian Act of 1889, for, as has been shown, his position would be materially improved thereby.

60. The Committee go on to state that the reality of the grievances of the British author and publisher "was admitted by the Copyright Commission of 1876." The reality of those grievances is not admitted in Canada, but if such grievances ever really existed they are less now, because the effect of the legislation of the United States is to curtail



very largely the publication of foreign reprints, and they would be less still under the Canadian Act of 1889, because the trade in foreign reprints would be almost, if not quite, abolished.

61. It is difficult to understand why this suggestion is made, with regard to the Foreign Reprints Act, unless it were intended as a suggestion in favour of greater restrictions as to copyright than those existing at present, by the repeal of the Foreign Reprints Act. If that were the object of the suggestion, it hardly calls for any remark, in view of the past history of this subject, and in view of the fact that the collection of customs duties in favour of British copyright holders is a matter of increasing inconvenience in Canada and must eventually be abandoned, for reasons which it is not now necessary to state at large.

62. Another suggestion in the report under review is that "Deprivation of Canadian copyright might be seriously detrimental to the interests of Australian authors, say, for instance, of a Melbourne novelist whose works are likely to obtain extensive circulation in Canada." The case is not a very probable one. In the words of the Committee, applied to Canadian authors, it may be, "treated as belonging rather to the future than to the present." It seems sufficient to say, for the present, that Australians are, and doubtless always will be, placed on the same footing as other British subjects in all Canadian legislation, but that, if it should become, at any time, a question what rights should be enjoyed in Canada by any class of Australians, it surely cannot be contended that that question should be decided by the Parliament of the United Kingdom or by the Parliament of Australia, rather than by the Parliament of Canada.

63. The report under review devotes a paragraph to the interests of the Canadian author of whom it is said that under the Canadian Act of 1889, he would be deprived of copyright in every country outside of Canada. This would be by no means the case unless Imperial legislation were adopted to withdraw from Canadians not only the rights within the Empire, conceded to all British subjects, but the rights conceded to the people of most foreign countries, under the Berne Convention, which seems a suggestion quite unworthy of a place in this controversy.

64. The Canadian Parliament has not overlooked the interests of its authors or of any other class. When it speaks, as it has done on the subject, it speaks after full consideration of all the interests involved, and which it is well able to weigh.

65. The report under review proceeds to discuss at some length the question whether indeed the Canadian publishers have any grievance, and whether such grievance has been enhanced by the Berne Convention. If the Committee had obtained information upon this subject in Canada, where alone the facts are to be found, they could hardly have arrived at the conclusion which they state. The Canadian publisher has never had an opportunity of competing with his rivals in the United States, except in rare cases, as where a Canadian has brought copyright from United States publishers to whom the markets of Canada had been sold by the British copyright holder, and sometimes directly from a British copyright holder.

66. The effects of the Berne Convention have already been discussed, but the Committee could have found abundant evidence in Canada that the grievance of the Canadian publisher has been greatly augmented by every change in the copyright law of the United Kingdom, in recent years. His condition has been made distinctly worse by the Berne Convention and the grievance has been greatly enhanced by the concessions made by Her Majesty's Government to the United States, under the "arrangement" for which this Government was for many years asked to wait as a measure which would give the relief desired.

67. The report suggests, as has already been remarked, that "the real grievance of the Canadian publishers is that they are undersold by competitors who have the advantage of larger capital and a larger market and in whose favour protective legislation is enforced, against their weaker rivals." In considering this view of the case, too much stress ought not to be laid on the weakness of the Canadian publisher. The fact is that he has not been allowed to compete with his United States rival.

68. In exceptional cases, where a Canadian publisher has secured a right to his own market, it has been found that books have been produced in Canada at lower rates than in the United States. Numerous instances can be cited of books which were printed in the United States and reprinted in Canada to prove that these books have been sold in Canada at a price eighty per cent below the price of the United States editions. The real grievance of the Canadian publisher, the Canadian type-setter and every other Canadian workman engaged in the production of books, as already stated, is that he is not allowed to compete with his United States rivals, by reason of his being a British

subject and, therefore, bound by the copyright legislation of the United Kingdom. It is true, as stated by the Committee, that the United States competitor has a larger market, because the United States publisher of books controls the market of the United States *plus* the market of Canada; while the Canadian producer has not even the market of Canada, except in the rare cases before referred to, and then he can supply only Canada, being debarred from the United States markets because his book is not printed in the United States.

69. It is also true that the Canadian publisher is handicapped by the protective legislation of the United States, in favour of the publishing interest of that country, and especially by the obligation on the applicant for copyright to print from type set in the United States, while the citizens of the country imposing that condition are allowed all the advantages of British subjects, and Canadians are denied the right to impose any such conditions as to Canada.

70. The report under review again makes this statement with regard to the Canadian publishing interest, evidently from erroneous information: "What the Canadian publisher and printer want is to keep out books, cheap or otherwise, not printed or published at their own establishments." As a matter of fact, what the Canadian publisher and printer desire to do is to supply the cheap books which the Canadian reader desires. Under the Canadian Act of 1889, a publisher could have no monopoly in republishing copyright books, because the Government would have the right to grant any number of licenses to reprint. Furthermore, the British publisher would still have the opportunity to send his books from Great Britain to Canada.

71. It must, therefore, be repeated that it is desired that the Canadian publisher, be permitted to sell in his own market; a market which, under present conditions, is reserved for the benefit of persons outside of Canada.

72. The Committee has suggested that "The simplest and most effectual mode of lessening the price of Canadian books would be to remove or reduce the Canadian import duty of fifteen per cent. on books."

73. The undersigned cannot agree with this view. The experience of the past has proved that the simplest and most effectual mode of lowering the price of Canadian books would be to have the Canadian press unlocked and the Canadian publisher and printer permitted to produce books.

74. The removal of the Canadian import duty would undoubtedly be an additional boon to the publishers and printers of the United States, but the undersigned ventures to think that the interests of that class have been already sufficiently cared for and do not require additional advantages from the Government of Canada.

75. The argument in favour of reducing the Canadian import duty in order to cheapen books is somewhat in contrast with another statement in the report under review, *viz.*, the declaration that the royalty to copyright holders proposed by the Act of 1889 should be greatly increased and that more stringent methods of taxation should be adopted in order to secure the collection of the tax.

76. In paragraph 56, the Committee suggest that "the amount of royalty might perhaps be fixed at fifteen per cent. so as to correspond with the amount of the existing import duty on books and that the royalty might be levied by means of a stamp on each copy, so that if unstamped books were offered for sale they should be liable to seizure."

77. It seems to be implied from this that the import duty and the tax in favour of the copyright holder should be equal and it would then follow that a reduction of the import duty, as advised by the Committee, would at any time be accompanied by a reduction of the copyright holder's royalty.

78. The intimation, contained in paragraph 57 of the Committee's report, that such Canadian legislation as is required should be confined to books, is not acquiesced in by the undersigned. It is true, as stated in the report of the Committee, that copyright in musical, dramatic, and artistic works raises a very difficult question, but the right of the Canadian Parliament to receive the power of self-government with respect to those matters is surely as plain as it is in relation to books. The demand to have that right conceded is surely not too difficult to be understood by statesmen of a country which has granted that right freely, in relation to all other commodities.

79. The Committee in their report under review, have stated various objections to the details of the Canadian Act of 1889. These objections, in the view of the undersigned, are not maintainable. They say: "That twelve months might be allowed as a reasonable time" (to the copyright holder) "for cheap reproduction, and during that time the Imperial copyright should remain unimpaired." In reply to this it must be said that in less than twelve months the Canadian market would be flooded with American reprints and

the sale of the book would be over. The report then says that "the royalty might perhaps be 15 per cent. so as to correspond with the amount of the existing import duty on books." In the view of the undersigned, the Canadian proposition of 10 per cent. royalty on each copy would yield much larger returns than the one proposed, which would be 15 per cent. *ad valorem* on the quantity imported, at wholesale rates. Such is obviously the meaning of the proposition of the Committee as is seen by reference to the import duty which is an *ad valorem* duty on the wholesale rates.

80. The 10 per cent. royalty proposed by the Canadian Parliament would be imposed on the retail price of each book and would take the place of the 12½ per cent. now collected by customs on wholesale rates, *ad valorem*, for the benefit of the copyright holder. An example may be taken to illustrate. A book issued last year cost, when imported from the United States, \$22 for 100 copies. The duty at 12½ per cent. was \$2.75. The retail price of the book being 50 cents, the royalty therefrom at 10 per cent. (as it would be if the book were republished in Canada), would be \$5. Thus securing a gain to the copyright holder of nearly 100 per cent.

81. The undersigned, however, does not deem this a proper place to discuss the details of the Canadian Act; as he does not deem it the proper place to discuss the legal rights of the Canadian Parliament to pass that Act. What the Canadian Parliament and Government desire is that the right of the Parliament of Canada to legislate on this subject shall be relieved of all doubt; and there would still be left to Her Majesty's Government the same constitutional right which it has with regard to all legislation in Canada, and which, it is submitted, is sufficient to secure every reasonable requirement for the security of Imperial interests.

82. The undersigned stated in his letter to Lord Knutsford in 1890, that a most respectful consideration would be given to any suggestions for the improvement of the Canadian Act of 1889 which his Lordship might think proper to make, after hearing all that might be advanced on both sides. It would seem only reasonable, at the present time, however, that after all that has taken place some step in advance should be taken towards removing Canadian grievances beyond the mere routine of inquiries, reports, and suggestions. It was hoped that that stage had been reached when the report of the Royal Commission of 1876 was made especially in view of the fact that the report of that Commission was so favourable to Canadian claims.

Respectfully submitted,

JNO. S. D. THOMPSON,

Minister of Justice.

No. 44.

COLONIAL OFFICE to FOREIGN OFFICE, BOARD OF TRADE, and  
TREASURY.

[Answered by Nos. 48 and 50.]

SIR,

Downing Street, April 19, 1894.

I AM directed by the Marquess of Ripon to transmit to you, to be laid before the Earl of Kimberley, Board of Trade,

a copy of an extract from the Tariff Bill now before Lords Commissioners of the Treasury, the Canadian Parliament, dealing with the duty on imported foreign reprints of British copyright books, and also an extract from the budget speech of the Minister of Finance respecting the provision in question.

Lord Ripon would be glad to be favoured with any observations which Lord Kimberley, the Board of Trade, may have to offer on this proposal. their Lordships,

the Board of Trade and the Treasury.

A similar letter has been addressed to the Foreign Office and the Treasury.

the Foreign Office and the Board of Trade.

I am, &c., JOHN BRAMSTON,

## Enclosure 1 in No. 44.

EXTRACT from HOUSE of COMMONS DEBATES, dated 27th March 1894.

## BOOKS and PAPERS.

\* \* \* \* \*

British copyright works, reprints of, 6 cents per pound and in addition thereto  $12\frac{1}{2}$  per cent. *ad valorem* until March 27th, 1895, and thereafter 6 cents per pound.

## Enclosure 2 in No. 44.

EXTRACTS FROM HOUSE of COMMONS DEBATES, dated March 27th, 1894.

\* \* \* \* \*

*Mr. Foster.*—The duty will be 6 cents per pound for books, instead of an *ad valorem* duty of 15 per cent. British copyright, reprints of, will have in addition to 6 cents per pound, a duty of  $12\frac{1}{2}$  per cent. which is the amount we collect in payment of the copyright and transmit.

*Mr. Edgar.*—Is this *ad valorem*?

*Mr. Foster.*—Yes. But there is a clause attached, which is as follows: This duty shall continue until 27th March 1895, and thereafter the rate shall be 6 cents per pound, it being the intention of the Government not to continue to collect this amount, but to try and have the matter adjusted by that time in a better and more satisfactory way.

## No. 45.

THE EARL OF ABERDEEN to the MARQUESS OF RIPON.  
(Received April 19, 1894.)

Government House, Ottawa,  
March 30, 1894.

MY LORD,

I HAVE the honour to forward herewith, for your Lordship's information, copy of an approved Minute of the Privy Council intimating that under the revised Canadian Customs Tariff, provision will no longer be made for the collection of the duty of  $12\frac{1}{2}$  per cent. imposed on foreign reprints of British copyright works for the benefit of copyright holders.

Your Lordship will observe that the reason advanced for the change in the existing arrangement is the expectation entertained by the Government of changes in the Imperial copyright laws in so far as they apply to Canada.

I may inform your Lordship that the tariff which was submitted to the House on the 27th instant provides that the present arrangement shall terminate on the 27th March 1895.

I have, &c.  
ABERDEEN.

## Enclosure in No. 45.

CERTIFIED COPY of a REPORT OF A COMMITTEE of the HONOURABLE the PRIVY COUNCIL, approved by his Excellency the GOVERNOR-GENERAL IN COUNCIL, on the 28th March 1894.

On a report dated 24th March 1894, from the Minister of Trade and Commerce, upon the provisions of the Canadian tariff about to be introduced in the House of Commons of Canada affecting the subject of copyright, stating that hitherto, at great expense and trouble, a duty of  $12\frac{1}{2}$  per cent. has been collected on foreign reprints of British copyright works, for the benefit of copyright holders, over and above the duty payable for the benefit of the revenue of Canada, and calling attention to the fact that, in the tariff now proposed, this collection of  $12\frac{1}{2}$  per cent. will cease to be made after the expiration of the next session of Parliament, in view of the changes which are expected in the Imperial copyright laws in so far as they apply to Canada.

The Committee, on the recommendation of the Minister of Trade and Commerce, advise that your Excellency be moved to forward a certified copy hereof to the Right Honourable the Secretary of State for the Colonies.

JOHN J. MCGEE,  
Clerk of the Privy Council,

No. 46.

COPYRIGHT ASSOCIATION to COLONIAL OFFICE.  
(Received April 20, 1894.)

[Answered by No. 51.]

Aldine House, Belvedere, Kent,  
April 19, 1894.

MY LORD MARQUESS,

As Honorary Secretary to the Copyright Association I beg most respectfully to draw your Lordship's attention to the legislation on copyright now taking place in the Dominion of Canada.

I am desired to request your Lordship to be courteous enough to permit and to direct that a copy of the new Canadian Bill on the subject be sent to me for the information and consideration of the Copyright Association.

I am further desired to ask your Lordship's attention to the fact that copyright is one of the subjects reserved, as far as Imperial interests are concerned, by the North American Dominion Act of 1867 for the consideration of the Imperial Government and Parliament, and humbly to request your Lordship, if such a course meets with your approval, to allow the Governor-General of the Dominion of Canada to be informed that your Lordship desires this Bill to be reserved for the Royal Assent and not classed as an unreserved Bill or to obtain his sanction without your own due consideration.

I venture to emphasize this request by informing your Lordship that when Canada last legislated on this subject the Bill was inadvertently treated as an unreserved Bill and would have received the Governor-General's sanction if I had not had the opportunity of seeing the late Sir John A. Macdonald at Ottawa and eliciting a promise from him that the Bill should not become current without the sanction of the Home authorities.

When that sanction was sought it was discovered that the Bill was "ultra vires," and so inimical to the authors' interests throughout the rest of the Empire that that sanction could not be given.

I am, &c.

FREDERIC R. DALDY,  
Hon. Sec. Copyright Association.

No. 47.

COLONIAL OFFICE to BOARD OF TRADE, FOREIGN OFFICE, and  
TREASURY.

SIR,

Downing Street, April 23, 1894.

I AM directed by the Secretary of State for the Colonies to transmit to you, to the Board of Trade, be laid before the Earl of Kimberley, with reference to the letter the Lords Commissioners of the Treasury, from this department of the 19th instant,\* copy of a Despatch† on the subject of the revised Canadian Customs Tariff as affecting the collection of the duty on foreign reprints of British copyright works.

A similar reference has been made to the Foreign Office and Treasury, the Board of Trade and Treasury, the Board of Trade and Foreign Office.

I am, &c.

R. H. MEADE.

\* No. 44.

† No. 45.

No. 48.

## FOREIGN OFFICE to COLONIAL OFFICE.

(Received April 26, 1894.)

[Answered by No. 55.]

SIR,

Foreign Office, April 25, 1894.

I AM directed by the Earl of Kimberley to acknowledge the receipt of your letter of the 19th instant\* in which you invite His Lordship's observations upon an extract from the Canadian Tariff Bill dealing with the duty on imported foreign reprints.

In reply, I am to observe that this particular point forms part of the more general question raised by the demand of the Canadian Government to have uncontrolled power of legislating in regard to copyright.

The voluminous papers enclosed in your letter of the 20th instant† are now being studied in this Department with the view to enable Lord Kimberley to form a judgment in regard to them, but, in the meanwhile, I am to suggest that such steps as the Marquess of Ripon may consider right and proper should be taken to prevent the passing in Canada of any legislative provision which would have the effect of prejudicing the decision of the general question or of forcing the action of the Imperial authorities in regard to it.

I am, &amp;c.

E. GREY.

No. 49.

## FOREIGN OFFICE to COLONIAL OFFICE.

(Received April 30, 1894.)

[Answered by No. 58.]

SIR,

Foreign Office, April 28, 1894.

I AM directed by the Earl of Kimberley to acknowledge the receipt of your letter of the 20th instant† relative to the question of Canadian Copyright.

The issues involved being of a highly technical nature, his Lordship would suggest, for the Marquess of Ripon's consideration, that the matter should again be referred to the Departmental Committee which recently met to consider the Canadian Act of 1889, and upon whose report the report of the Canadian Government is founded.

In the event of this suggestion being favourably entertained, this Department would be represented, as before, by Sir Henry Bergne.

I am, &amp;c.

FRANCIS BERTIE.

No. 50.

## TREASURY to COLONIAL OFFICE.

(Received May 1, 1894.)

SIR,

Treasury Chambers, April 30, 1894.

I AM directed by the Lords Commissioners of Her Majesty's Treasury to acknowledge the receipt of your letters of the 19th and 23rd instant,‡ relating to the proposed discontinuance of the collection of duty on the introduction into Canada of reprints of British copyright works and to state that their Lordships presume that it is understood that the effect of the revised Canadian Customs Tariff will be that the Copyright Acts will come into force prohibiting the introduction of reprints of British copyright works into the Colony on the 27th March 1895 in the absence of any change in the Imperial copyright laws in so far as they apply to Canada, of which proposed change my Lords have no information before them.

I have, &amp;c.

FRANCIS MOWATT.

\* No. 44.

† Not printed.

‡ Nos. 44 and 47.

No. 51.

COLONIAL OFFICE to COPYRIGHT ASSOCIATION (F. R. DALDY, Esq.).

[Answered by No. 56.]

SIR,

Downing Street, May 1, 1894.

I AM directed by the Marquess of Ripon to acknowledge the receipt of your letter of the 19th ultimo,\* calling attention to the legislation on copyright now taking place in the Dominion of Canada, and requesting to be furnished with a copy of the Canadian Bill on the subject.

In reply, I am to acquaint you that there is no separate Bill on the subject of Copyright now before the Canadian Parliament but the clause of which a copy is enclosed† occurs in the Tariff Bill now before the Dominion House of Commons.

I am also to enclose an extract,‡ from the speech of the Finance Minister introducing the budget in which he refers to the clause in question.

The subject is now engaging the attention of Her Majesty's Government.

I am, &amp;c.

JOHN BRAMSTON.

No. 52.

THE MARQUESS OF RIPON to the EARL OF ABERDEEN.

TELEGRAPHIC.

[Not answered.]

May 1, 1894.—Revised tariff; have your Ministers considered what will be effect of second section of Colonial Laws Validity Act, 1865, upon clause admitting foreign reprints after March 27 next?

They, of course, recognise that Queen may be advised to revoke Order in Council approving duty on if that clause be passed.

No. 53.

COLONIAL OFFICE to TREASURY.

SIR,

Downing Street, May 3, 1894.

WITH reference to your letter of the 30th ultimo,§ respecting the proposed discontinuance of the collection of duty on the introduction into Canada of reprints of British copyright works, I am directed by the Marquess of Ripon to transmit to you, for the information of the Lords Commissioners of the Treasury, a copy of a telegram|| which has been sent to the Governor-General of Canada on the subject.

I am, &amp;c.

JOHN BRAMSTON.

No. 54.

COLONIAL OFFICE to BOARD OF TRADE.

SIR,

Downing Street, May 3, 1894.

WITH reference to the letter from this Department of the 19th ultimo,¶ respecting the clause in the new Canadian Tariff Bill dealing with the duty on foreign reprints of British copyright works, I am directed by the Marquess of Ripon to transmit to you, for the information of the Board of Trade, copies of correspondence\*\* with the Foreign Office on the subject.

I am, &amp;c.

JOHN BRAMSTON.

\* No. 46.

† Enclosure 1 in No. 44.

‡ Enclosure 2 in No. 44.

§ No. 50.

|| No. 52.

¶ No. 44.

\*\* Nos. 48 and 55.

No. 55.

## COLONIAL OFFICE to FOREIGN OFFICE.

SIR,

Downing Street, May 3, 1894.

IN reply to your letter of the 25th ultimo,\* respecting the clause in the Canadian Tariff Bill dealing with imported foreign reprints, I am directed by the Marquess of Ripon to transmit to you, for the information of the Earl of Kimberley, a copy of a telegram† which has been sent to the Governor-General of Canada on the subject.

I am to state with reference to the last paragraph of your letter under reference, that, as Lord Kimberly is aware, the Secretary of State has no power to prevent the Parliament of the Dominion from passing whatever laws it thinks advisable, and that all that he can do is, in extreme cases, to advise Her Majesty to disallow the law.

As regards the particular clause in question, I am to observe, that as the Order in Council issued under the Foreign Reprints Act only suspends the operation of the Copyright Act of 1842 in Canada so long as the Canadian Act authorising the duty of 12½ per cent. remains in force, the Dominion Government cannot justly complain if Her Majesty should revoke the Order in Council when the Canadian Tariff Act comes into force, or when the duty ceases in March 1895. The effect of revoking that order will be that no foreign reprints can be lawfully imported into Canada for sale or hire, but this would not affect American prints of books the copyright of which for the United States and Canada has been purchased by an American publisher.

In these circumstances Lord Ripon would not be prepared to advise Her Majesty to disallow the Canadian Tariff Act on account of this clause, as it would seem that the provision admitting foreign reprints would, by virtue of section 2 of the Colonial Laws Validity Act, 1865, appear to be inoperative on the ground of its being repugnant to the Copyright Act of 1842.

I am, &amp;c.

JOHN BRAMSTON.

No. 56.

## COPYRIGHT ASSOCIATION to COLONIAL OFFICE.

(Received May 4, 1894.)

[Answered by No. 60.]

DEAR SIR,

Aldine House, Belvedere, Kent,

May 3, 1894.

I BEG to thank you for your letter of the 1st instant,‡ and its enclosures. You will see by my letter in to-day's "Times" that further communications ought to have reached you from Canada. When they arrive will you kindly let me know their exact purport?

The Copyright Association and the Chamber of Commerce are arranging deputations to the Marquess of Ripon. Will you kindly tell his Lordship this, and ask him not to reply to Canada till he has seen us? It really is important, for the United States must withdraw her copyright arrangement, if our copyright does not run in Canada, and then we shall have two fields for piracy instead of one, and also the disgrace of giving the United States an assurance we are unable to sustain.

Believe me, &amp;c.

F. R. DALDY.

No. 57.

## COLONIAL OFFICE to BOARD OF TRADE.

SIR,

Downing Street, May 4, 1894.

WITH reference to the letter from this Department of the 20th ultimo,§ respecting the Canadian Copyright question, I am directed by the Marquess of Ripon to transmit to you, to be laid before the Board of Trade, copies of correspondence|| with the Foreign Office on the subject.

\* No. 48.

† No. 52.

‡ No. 51.

§ Not printed.

|| Nos. 49 and 58.



His Lordship would be glad if the Board would again summon the Committee which considered the question of the Canadian Copyright Act of 1889, with a view to considering the present position of the question.

I am, &c.

JOHN BRAMSTON.

No. 58.

COLONIAL OFFICE to FOREIGN OFFICE.

(Extract.)

SIR,

Downing Street, May 4, 1894.

In reply to your letter of the 28th ultimo,\* respecting the question of Canadian copyright, I am directed by the Marquess of Ripon to acquaint you, for the information of the Earl of Kimberley, that he concurs in the suggestion that the matter should again be referred to the Departmental Committee which was appointed to consider the Canadian Act of 1889.

Mr. Bramston will again represent this Department.

I am to add that his Lordship is communicating with the Board of Trade as to summoning the Committee.

No. 59.

THE SOCIETY OF AUTHORS to COLONIAL OFFICE.

(Received May 8, 1894.)

[Answered by No. 62.]

Incorporated Society of Authors,  
4, Portugal Street, Lincoln's Inn Fields, W.C.,

May 7, 1894.

SIR,

I AM instructed by Sir Frederick Pollock, Chairman of the Committee of the Incorporated Society of Authors, to ask whether you could give the Society any information with regard to the Bill on Canadian Copyright which, I understand, is awaiting Her Majesty's assent. I should be very much indebted if it would be possible for you to forward me a copy of the Bill to lay before our Committee, as of course the question is one of vital importance to all English authors. It is now almost a year ago that we had the matter before the Committee and on that occasion, when the Society communicated with you,† you did us the honour to state that you would do everything in your power to assist us on behalf of British authors.

I am, &c.

G. HERBERT THRING.

No. 60.

COLONIAL OFFICE to COPYRIGHT ASSOCIATION (F. R. DALDY Esq.).

[Answered by No. 64.]

SIR,

Downing Street, May 12, 1894.

In reply to your letter of the 3rd instant,‡ on the subject of copyright in Canada, I am directed by the Marquess of Ripon to acquaint you that the communication from the Dominion Government on this question to which he understands you to refer have been received, and are being referred to the Departmental Committee which was appointed to consider the Canadian Copyright Act of 1889.

In these circumstances his Lordship does not think that there would be any advantage in his receiving a deputation on the question until it has been considered by the Committee, and he desires me to add that if you will be good enough to put into writing

\* No. 49.

† No. 40.

‡ No. 56.

any observations which you think would be of use to the Committee in dealing with the question, he will be glad to receive them, and to refer them to the Committee.

I am, &c.

JOHN BRAMSTON.

No. 61.

COLONIAL OFFICE to FOREIGN OFFICE, BOARD OF TRADE,  
and TREASURY.

SIR,

Downing Street, May 16, 1894.

I AM directed by the Secretary of State for the Colonies to transmit to you, for the Earl of Kimberley, the information of the Board of Trade, with reference to the letter the Lords Commissioners of the Treasury from this Department of the 3rd instant,\* copy of the paper noted below† on the subject of the discontinuance of the collection of duty on the introduction into Canada of reprints of British copyright works.

I am, &c.

R. H. MEADE.

Enclosure in No. 61.

EXTRACT from HOUSE OF COMMONS DEBATE, April 24, 1894.

*Mr. Foster.*\* \* \* \* British Copyright works, reprints of, 6 cents per pound, and in addition thereto 12½ per cent. *ad valorem* until March 27th, 1895, and thereafter 6 cents per pound.

*Mr. Edgar.*—I would like to ask the Minister of Justice if he has communicated to the English Government yet the fact that he proposes after next year to take off the author's royalty?

*Sir John Thompson.*—Yes; the communication was made fully a month ago.

*Mr. Edgar.*—And is there any reply?

*Sir John Thompson.*—No, not yet.

*Mr. Foster.*—I wish to amend that item. Instead of having a fixed date, I wish to substitute the words "until the end of the next session of Parliament."

No. 62.

COLONIAL OFFICE to the SOCIETY OF AUTHORS.

[Answered by No. 63.]

SIR,

Downing Street, May 18, 1894.

I AM directed by the Marquess of Ripon to acknowledge the receipt of your letter of the 7th instant,‡ respecting the Canadian Copyright question.

Lord Ripon desires me to acquaint you that the Society is in error in supposing that there is any new Bill on copyright in Canada now before Her Majesty's Government. His Lordship presumes your letter refers to a clause in the Tariff Bill of the Canadian Parliament which is intended to remove the duty on foreign reprints of British copyright works.

I am to enclose a copy of the clause§ in question which it is understood is not intended to come into operation until the end of the next session of the Dominion Parliament.

\* Nos. 53, 54, and 55.

† Extract from Debates of House of Commons of Canada, 24th April 1894, as to date of discontinuance of duty.

‡ No 59.

§ Enclosure 1 in No. 44.

In the meantime, Lord Ripon has invited the attention of the Government of Canada to the effect which the second section of the Colonial Laws Validity Act, 1865, may have upon this clause in the Tariff Bill.

I am to add that a communication on the general question of copyright in Canada has been received and will be sent to the Society, when printed, for any remarks they may have to offer.

In conclusion I am to observe that the letter from this Office of the 17th of February 1893,\* to which it is supposed you refer in the concluding sentence of your letter under acknowledgement merely stated that the desire of the Society to be informed of the answer of the Dominion Government would be borne in mind.

I am, &c.

JOHN BRAMSTON.

No. 63.

THE SOCIETY OF AUTHORS to COLONIAL OFFICE.

(Received May 21, 1894.)

4, Portugal Street, Lincoln's Inn Fields, W.C.,

May 19, 1894.

MY LORD,

I BEG to thank your Lordship for your communication of the 18th May† forwarded to me by your Lordship's instructions. The information contained in it will be of the utmost importance to the Society and will be laid before the Committee in due course.

I trust that the phrase contained in my last letter was not misunderstood, and can only tender your Lordship my sincere apologies for any mis-statement that I have made.

I am, &c.

G. HERBERT THRING.

No. 64.

COPYRIGHT ASSOCIATION to COLONIAL OFFICE.

(Received May 24, 1894)

[Answered by No. 65.]

COPYRIGHT IN CANADA.

Aldine House, Belvedere,

May 22, 1894.

SIR,

I AM desired by the Copyright Association to request you to thank the Marquess of Ripon for the letter of the 12th instant‡ on this subject.

In reply, I am to inform you that the Association will be most happy to consider the subject carefully, with a view to laying their opinions before the Committee to whom the question has been referred; but they feel unable to do this properly without seeing the communications from the Dominion Government which the Committee are instructed to report upon.

I am therefore instructed to ask you to obtain permission from the Marquess of Ripon to send me a copy of them:—Perhaps his Lordship may be induced to bear in mind that the Association represents to a large extent the property which they fear the Canadian requests may jeopardize and the value of which they may seriously injure.

With reference to an interview with his Lordship the Association suspend their judgment till they become better informed as to its immediate necessity.

I am, &c.

F. R. DALDY,

Hon. Sec. of the Copyright Association.

\* No. 41.

† No. 62.

‡ No. 60.

No. 65.

COLONIAL OFFICE to COPYRIGHT ASSOCIATION (F. R. DALDY, Esq.).

SIR,

Downing Street, May 30, 1894.

I AM directed by the Marquess of Ripon to acknowledge the receipt of your letter of the 22nd instant,\* and to enclose herewith, for the information of the Copyright Association, a copy of a Memorandum† by Sir John Thompson, the Premier of the Government of Canada, on the subject of Copyright in the Dominion.

I am, &amp;c.

EDWARD WINGFIELD.

No. 66.

TREASURY to COLONIAL OFFICE.

(Received June 2, 1894.)

SIR,

Treasury Chambers, June 1, 1894.

WITH reference to your letters of the 3rd and 16th ultimo,‡ respecting the discontinuance of the collection of duty on the introduction into Canada of reprints of British copyright works, I am directed by the Lords Commissioners of Her Majesty's Treasury to request that you will inform the Secretary of State that their Lordships are waiting for a reply from the Board of Trade referring to the subject of your letter of the 23rd April last.§

I am also to request that you will call the attention of the Secretary of State to the Colonial Office letter of the 23rd November 1891,|| in which it is stated that a correspondence was in progress with Canada relative to the request of the Dominion Government for the introduction of Imperial legislation to give them extended powers to deal with copyright. My Lords presume that this may probably bear on the subject of Lord Aberdeen's Despatch of the 30th March, transmitted in your letter of the 23rd April last, above-mentioned.

I am, &amp;c.

FRANCIS MOWATT.

No. 67.

COLONIAL OFFICE to the SOCIETY OF AUTHORS.

[Answered by No. 69.]

SIR,

Downing Street, June 9, 1894.

WITH reference to your letter of the 19th of May,¶ I am directed by the Marquess of Ripon to transmit to you, to be laid before the Society of Authors, a copy of a Memorandum‡ by Sir John Thompson, Prime Minister of Canada, dealing with the Report of the Departmental Committee on the subject of copyright in Canada.

Lord Ripon would be glad to be furnished as soon as possible with any observations which your Society may wish to offer on these papers.

I have, &amp;c.

JOHN BRAMSTON.

No. 68.

THE SOCIETY OF AUTHORS to COLONIAL OFFICE.

(Received June 16, 1894.)

[Answered privately—permission accorded.]

4, Portugal Street, Lincoln's Inn Fields, W.C.,

June 14, 1894.

DEAR SIR,

I SHOULD be exceedingly obliged if you would kindly ask the Marquess of Ripon whether he would give his consent to the Society of Authors placing the papers and

\* No. 64.

§ No. 47.

† Enclosure in No. 43.

|| Not printed.

‡ Nos. 53 and 61.

¶ No. 63.

communications that have been addressed to them before a Copyright Committee which has been formed by all the representative classes of copyright holders in the United Kingdom to watch the question of Canadian Copyright. As his Lordship's papers were sent to the Society, and to the Society alone, I do not feel entitled to take any steps without referring to his Lordship in the matter.

An early answer will oblige.

I am, &c.

G. HERBERT THRING.

No. 69.

THE SOCIETY OF AUTHORS to COLONIAL OFFICE.

(Received June 20, 1894.)

[Answered by No. 70.]

4, Portugal Street, Lincoln's Inn Fields, W.C.,

June 19, 1894.

DEAR SIR,

WITH reference to your letter to the Society of Authors of the 9th June,\* containing a copy of the report of Sir J. Thompson dealing with the report of the Departmental Committee, I beg to inform you that the Society have placed all the papers before counsel to advise the Society on the action to be taken. Herewith I forward you the copy of counsel's opinion which has been taken by the Society, in accordance with the instructions of the Committee. The Committee instruct me to say that until and pending the opinion of the Joint Committee which has been formed and which will meet on the 25th of this month they do not think they can add anything further to the opinion put forward by counsel on the matter.

I beg to thank his Lordship the Marquess of Ripon and yourself for the kindness you have shown the Society in the matter in forwarding them papers.

I am, &c.

G. HERBERT THRING.

Enclosure in No. 69.

COUNSEL'S OPINION.

The new documents before me consist of (1) a copy of a memorandum by Sir John Thompson dealing with the report of the Departmental Committee on Canadian Copyright; and (2) a clause in the Canadian Tariff Bill which proposes, after 27th March 1895, to remove the *ad valorem* duty payable on foreign reprints payable under the Canadian Act of 1868.

Sir John Thompson's memorandum does not deal with the details of the Canadian Act of 1889, but is an attempt to answer some of the objections to the principle of that Bill set forth in the Departmental Committee's Report, and to show that the Canadian Legislature ought to be allowed to repeal the Copyright Act of 1842 so far as regards Canada, and to deprive the British author of his rights in order to foster the Canadian printing and publishing interests.

It does not appear to me that I can usefully follow all the arguments contained in the memorandum on the above question or that it is within the scope of my instructions to do so. They are all based on the fallacy that the Canadian publishers and printers have some inherent right to have the profit of publishing and printing the works of British authors, and that if the latter do not find it necessary or convenient to publish or print in Canada the Canadian Legislature has a right to make them do so, and that to deny them this right is to deprive them of the benefit of self-government. Such arguments (even when supported apparently by a threat of separation in case they are not yielded to (see p. 12, bottom)) do not appear to require to be answered at length. One argument which does perhaps require special notice is that drawn from the example of the United States. With regard to this it is to be observed that in the case of the United States the British author had, under the circumstances, to accept

\* No. 67.

such terms as were offered, but that such acceptance did not in any way involve a recognition of the justice of those terms, and it would be most unfortunate if this exceptional case were to be drawn into a precedent. If it were it might become necessary for a work to be reprinted and published separately in every British Colony. The Society will no doubt itself consider the memorandum and would have no difficulty in drawing up a full reply if thought advisable, but I cannot see that the arguments contained in it were such as to require a detailed reply. All that it seems to me to be necessary for the Society to do at present is to submit to the Home Government that Sir John Thompson's memorandum affords no answer whatever to the reasons given in the report of the Departmental Committee against the passing of an Act to confirm the Canadian Act, pointing out that the demand for legislation appears to come solely from the Canadian printer and publisher, and that it would be most unfair that their industries should be fostered and protected at the expense of the rights of authors as established by Imperial Legislation and the Berne Convention. A protest should also be added against the case of the United States being turned into a precedent for Imperial or Colonial Legislation. The result of the system of protection insisted on there is no doubt unfortunate for the Canadian printers and publishers, but that is not, or ought not to be, a reason for extending it to Canada or elsewhere; the endeavour should rather be to induce the United States to abandon its present policy.

There is no sign in the memorandum that Canada would be prepared to accept any such licensing system as that suggested in paragraphs 55 and 56 of the Departmental Report, and it therefore does not seem necessary to deal with it at present. The objections to it would appear to be the difficulty in fixing the amount of the royalty and in securing its collection when fixed, but if it would solve the present difficulty it might be worth acceptance.

If the memorandum is dealt with shortly, as I have suggested, the Society should, of course, intimate that if there are any particular points on which further information is desired or which are thought to require a further answer it would be glad of an opportunity of considering them.

With regard to the proposed repeal of the *ad valorem* duty in foreign reprints it appears that the Colonial Office has already pointed out that such repeal would, or might, be invalid, as repugnant to the order made under the Foreign Reprints Act on the faith of such duty being imposed. The Society should, I think, consider whether there is any objection to that order, so far as it affects Canada, being repealed, if Canadian Government should insist on doing away with the duty. So far as I can see there is none. The only person who would have any reason to complain would be the Canadian reader, for whose especial benefit the Foreign Reprints Act was passed. I ought, perhaps, to point out that it is not at all clear that the repeal of the *ad valorem* duty would be invalid. Under the Foreign Reprints Act the Order in Council only authorises the admission of reprints so long as the Colonial Act affording protection to British authors is in force, from which it would seem that the Colony is at liberty to repeal the protection if it is prepared to give up the benefit of the Order in Council. I think it would be as well for the Society to endeavour to find out what is the object of the Canadian Legislature in repealing a duty they do not appear to have ever collected, except in very few cases, and in thereby depriving Canadian readers of the benefit of an Act supposed to have been passed for their special advantage.

J. ROLT.

4, New Square,  
Lincoln's Inn, W.C.  
18.6.94.

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No. 70.

COLONIAL OFFICE to the SOCIETY OF AUTHORS.

SIR,

Downing Street, June 26, 1894.

I AM directed by the Marquess of Ripon to acknowledge the receipt of your letter of the 19th instant\* enclosing copy of counsel's opinion on the Canadian Copyright Question.

His Lordship desires me to convey to you his thanks for this communication.

I have, &c.

JOHN BRAMSTON.

No. 71.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received July 4, 1894.)

[Answered by No. 74.]

SIR,

Foreign Office, July 3, 1894.

IN view of the statement made at the opening of the Ottawa Conference that the discussions would comprise the question of International and Colonial copyright, the English Copyright Association think it very important that the arguments in favour of maintaining the existing system of Imperial copyright should be fairly placed before the Conference by some competent person, and for this purpose have deputed their secretary, Mr. F. R. Daldy, to visit Ottawa.

Mr. Daldy possesses a thorough knowledge of the question, and Lord Kimberley would be glad, if the Marquess of Ripon sees no objection, that he should be furnished with a letter of introduction to the Earl of Jersey, so as to ensure attention to the arguments he wishes to offer for the consideration of the Conference.

Mr. Daldy will start next Saturday, and it might be well to apprise the Earl of Jersey, by telegraph, of his expected arrival, and the object of his visit, so that the Conference should not come to any conclusions on the subject of copyright until his arguments have been placed before it.

I am, &amp;c.

E. GREY.

No. 72.

THE MARQUESS OF RIPON to the EARL OF JERSEY (at OTTAWA).

(Sent July 4.)

TELEGRAPHIC.

[Answered by No. 73.]

Newspaper reports state that Conference will discuss question of Colonial copyright. Is report correct? Information required by telegraph immediately. In that case Copyright Association propose to send out honorary secretary Saturday. Consider it desirable that he should be heard.

No. 73.

THE EARL OF JERSEY to the MARQUESS OF RIPON.

(Received July 5, 1894.)

TELEGRAPHIC.

Sir John Thompson's memorandum, Copyright, has been communicated to Members of Conference but no discussion on the subject will take place.

No. 74.

COLONIAL OFFICE to FOREIGN OFFICE.

SIR,

Downing Street, July 5, 1894.

IN reply to your letter of the 3rd instant,\* respecting the proposed visit of Mr. F. R. Daldy, Honorary Secretary of the Copyright Association, to Canada, I am directed by the Marquess of Ripon to transmit to you, for the information of the Earl of Kimberley, a copy of a telegram which has been sent to the Earl of Jersey on the subject together with a copy of his reply.†

Lord Ripon will furnish Mr. Daldy with a letter of introduction to Lord Jersey as suggested in your letter.

I am, &amp;c.

EDWARD FAIRFIELD.

\* No. 71.

† Nos. 72 and 73.

No. 75.

THE MARQUESS OF RIPON to the EARL OF ABERDEEN and the EARL OF JERSEY (at OTTAWA).

MY LORD,

Downing Street, July 5, 1894.

THE bearer of this letter, Mr. F. R. Daldy, is the Honorary Secretary of the English Copyright Association, a body comprising all the principal proprietors of copyright in the United Kingdom, and has been deputed by that body to lay their views on the question of copyright in the Colonies before the members of the Conference at Ottawa.

Mr. Daldy, who was a member of the Royal Commission on Copyright, has devoted much attention to the question, and I have no doubt that [\*your Government and] the members of the Conference will give full consideration to the views which he has been deputed to lay before them.

I have pleasure in recommending Mr. Daldy to your good offices.

I am, &amp;c.

RIPON.

No. 76.

BRITISH MUSEUM to COLONIAL OFFICE.

(Received July 20, 1894.)

[Answered by Nos. 78 and 99.]

MY LORD MARQUESS,

British Museum, July 19, 1894.

THE Trustees of the British Museum learn that negotiations have some time since been opened by the Canadian Government with your Lordship's Department, with the view of obtaining some concessions in copyright legislation as applicable to Canada; and they would wish to draw your Lordship's attention to the fact that, by the Imperial Copyright Act of 1842, Canadian publications ought to be deposited in the British Museum. The obligation is, however, not observed by the Canadian Government, and the Trustees have, therefore, to purchase books which they should receive gratuitously.

It would seem, then, not unreasonable that, if the Canadian Government obtain any relaxation of copyright regulations in their favour, they should undertake on their part to comply with the law as regards the deposit of books in the British Museum, following the example of the Governments of India, and of the Cape of Good Hope, and of several Crown Colonies.

I am directed to make this statement to your Lordship, and to add that the Trustees will feel greatly obliged to you if you will be pleased to keep the interests of the British Museum in view in the course of the negotiations with the Canadian Government.

I have, &amp;c.

E. MAUNDE THOMPSON.

No. 77.

THE MARQUESS OF RIPON to the EARL OF ABERDEEN.

[Answered by No. 96.]

MY LORD,

Downing Street, August 4, 1894.

I HAVE the honour to transmit to you, to be laid before your Ministers, a copy of a letter from the British Museum,† respecting the supply to it of copies of books first published in Canada.

I need not remind your Ministers of the important advantage secured to Canada by virtue of the Copyright Act of 1886, by which copyright throughout Her Majesty's Dominions is granted to Canadian authors.

The collection in the British Museum is, as you are aware, the only national collection, and I am sure your Ministers will agree with me that it is important that it should be complete, and especially in respect of works issued in the most important of Her Majesty's Colonial Possessions, and that it is not too much to ask that a copy of a

\* To Lord Aberdeen only.

† No. 76.



work which receives important advantages from the Imperial legislation referred to should be supplied for use in the Museum.

Apart, therefore, from the question referred to in the letter from the British Museum, which is now engaging the attention of Her Majesty's Government, I hope that your Government will take such steps as may be in their power to ensure that copies of books published in the Dominion are furnished to the Museum.

I have, &c.

RIPON.

No. 78.

COLONIAL OFFICE to BRITISH MUSEUM.

SIR,

Downing Street, August 4, 1894.

In reply to your letter of the 19th ultimo,\* I am directed by the Marquess of Ripon to transmit to you, for the information of the Trustees of the British Museum, a copy of a Despatch† which has been addressed to the Governor-General of Canada, respecting the supply of books published in the Dominion to the Museum Library.

I have, &c.

JOHN BRAMSTON.

No. 79.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received August 21, 1894.)

[Answered by No. 80.]

SIR,

Foreign Office, August 20, 1894.

I AM directed by the Earl of Kimberley to transmit to you, herewith, to be laid before the Marquess of Ripon, copy of a note from the United States Chargé d'Affaires, inquiring whether there is any probability of Canada withdrawing from the British Copyright Acts, and I am to inquire what answer should, in his Lordship's opinion, be returned to Mr. Roosevelt.

I am, &c.

E. GREY.

Enclosure in No. 79.

Embassy of the United States, London,

August 16, 1894.

MY LORD, REFERRING to Lord Salisbury's note to Mr. Lincoln of June 16th, 1891, and the note of your Lordship's predecessor in office to Mr. Henry White of the 12th November 1892, I have the honour to ask your Lordship, under instructions from my Government, to be so good as to inform me if there be any just ground to apprehend that the reported agitation of Her Majesty's Dominion of Canada for the repeal of the British Copyright Acts may prove successful. The complications of copyright between the United States and Canada are, unhappily, already serious, but the sanction of the unrestricted freedom of literary reproduction in the Dominion would be so great an evil, that it is sincerely to be hoped that Her Majesty's Government may find it possible to avert any action which could in any way imperil the existing copyright agreement between Great Britain and the United States.

I have, &c.

JAMES R. ROOSEVELT.

The Earl of Kimberley, K.G.,

&c., &c., &c.

\* No. 76.

† No. 77.

No. 80.

## COLONIAL OFFICE to FOREIGN OFFICE.

SIR,

Downing Street, August 28, 1894.

I AM directed by the Marquess of Ripon to acknowledge the receipt of your letter of the 20th instant,\* enclosing copy of a note from the United States Chargé d'Affaires, enquiring whether there is any probability of Canada withdrawing from the British Copyright Acts.

Lord Ripon presumes that the Earl of Kimberley will agree with him in thinking that no further answer can be returned to the United States Chargé d'Affaires than to inform him that the question of Canadian Copyright is receiving the consideration of Her Majesty's Government, and that it would be impossible to make any statement on the subject at present.

I am, &amp;c.

JOHN BRAMSTON.

No. 81.

## COLONIAL OFFICE to FOREIGN OFFICE and BOARD OF TRADE.

SIR,

Downing Street, September 13, 1894.

WITH reference to previous correspondence, respecting the question of Copyright in Canada, I am directed by the Marquess of Ripon to transmit to you, for the information of, The Earl of Kimberley, Board of Trade, copies of correspondence on the subject between the Prime Minister of Canada and Mr. F. R. Daldy, which have been left with this Department by the latter gentleman.

I have, &amp;c.

EDWARD FAIRFIELD.

## Enclosure 1 in No. 81.

LETTER to Sir JOHN S. THOMPSON, Prime Minister of the Dominion of Canada, on  
CANADIAN COPYRIGHT.

*(From recollection.)*

DEAR SIR JOHN,

July 19, 1894.

I HOPED to get to Ottawa, with introductions to Lord Aberdeen and Lord Jersey, before the Conference separated, but I find it already dispersed. I shall, however, now that I am in the country, be most happy to come to Ottawa, if you think it useful to give the subject consideration. The Colonial Office have kindly allowed the Copyright Association to consider your last Despatch, and I am afraid that, with every disposition to meet your views, they will be unable to comply with your wishes. They are, however, desirous of finding a compromise which would remove all the obstacles apparent, except lessening the author's control over his property. They regret your laying your Despatch before the members of the Conference without its answer, as it can only present one side of the question.

I am, &amp;c.

To Sir John S. Thompson,  
Ministry of Justice,  
Ottawa.

F. R. DALDY,  
Hon. Sec. of the Copyright Association.

## Enclosure 2 in No. 81.

CANADIAN COPYRIGHT.

Office of the Minister of Justice, Ottawa,  
July 21, 1894.

MY DEAR SIR,

I HAVE your letter of the 19th instant. I should be very glad to see you, but have nothing further to say about Copyright at present. Parliament is dealing with the

matter, and I regard the subject as quite past the stage of negotiation. The treatment which Canada has received on this subject is too bad to be spoken of with patience. It is true that Members of the Conference were furnished with a statement of our case before *we received* a reply to our last communication, but *not before* we had *waited* for a reply. No reason has occurred to me why we should not do so, but we declined to submit the matter to the Conference for action, as the policy of our Parliament was so clear, and so firmly established, that we could not make it a matter for argument, although the members might properly be informed as to what that policy was.

Yours, &c.

JNO. S. D. THOMPSON.

F. R. Daldy, Esq.,  
c/o A. Molson, Esq.,  
Fern Hill, Georgeville,  
Lake Magog.

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Enclosure 3 in No. 81.

REPLY to Sir JOHN S. D. THOMPSON'S Letter of July 21st on CANADIAN COPYRIGHT.

DEAR SIR JOHN,

Fern Hill, August 1, 1894.

I AM sorry that my absence in the States to see a sick friend has prevented my replying sooner to your letter of the 21st ultimo, which I have now received.

From its tenor, I gather that a visit to Ottawa on its subject would not be of any advantage. This I regret, but, of course, I duly appreciate your reason. Your letter shall be brought under the notice of the Colonial Office as soon as I return to England. I can, however, assure you that the Colonial Office has bestowed great attention on your Despatch.

I am, &c.

F. R. DALDY.

To Sir John S. D. Thompson,  
Ministry of Justice,  
Ottawa.

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No. 82.

COPYRIGHT ASSOCIATION to COLONIAL OFFICE.  
(Received November 1, 1894.)

MY LORD MARQUSS,

London, October , 1894.

SIR JOHN THOMPSON'S Despatch on Canadian copyright, dated May 1894,\* which your Lordship kindly submitted to us for consideration, has been laid before a special joint committee of the Copyright Association, the Incorporated Society of Authors, the Printsellers' Association, and the sections of the London Chamber of Commerce representing the Printing and allied trades, the Music Publishers, Photography, and the Fine Arts.

This committee has devoted its attention to a detailed examination of the Despatch, and has the honour of laying before your Lordship, in the annotated copy accompanying this letter, a series of observations referring consecutively to each of its paragraphs. These observations will, they trust, commend themselves to your Lordship, and this committee will esteem it a favour if you will bring them under the notice of the Departmental Committee appointed to consider the Despatch.

This question has been so long under consideration that this committee, to prevent unnecessary repetition, respectfully direct special attention to Mr. F. R. Daldy's letters to the Colonial Office, dated February 22nd and November 1890.†

Hitherto, the laws of copyright have been directed to the protection of literary and artistic property *as a natural right of an author to the fruit of his labour*. They have not been designed to create any *exclusive trading privilege*.

All countries, including Germany, France, Austria, Spain, Italy, and Belgium, though their fiscal legislation is protective, have appreciated this distinction, except that the United States, in their recent Copyright Act, attached the condition of *printing* (not publishing) a book within their own country, but from this condition music and engravings are excepted.

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\* Enclosure in No. 43.

† Nos. 5 and 21.

The committee regard the Act of 1889 as a retrograde protective action on the part of Canada, and contrary to the principles adopted at present throughout the British dominions, viz. :—

1. That a work shall be first or simultaneously *published* therein ;
  2. That copyright shall be independent of the place of *printing* ;
- and they earnestly beg your Lordship not to yield to the request contained in Sir John Thompson's despatch.

In all Acts giving self-government to a Colony, the subject of copyright has been expressly or impliedly reserved for Imperial legislation. Canada's request is contrary to the principle now in force, which was established, and is maintained, because it seems impossible honestly to protect it as property without a *uniform law* for all parts of the Empire. This principle was also upheld by Mr. Gladstone as recently as 1892, in the Home Rule Bill he introduced for the consideration of Parliament.

They desire to point out that Canada requests the Imperial Government to legislate so as to restrict and curtail rights which authors have enjoyed throughout the Empire ever since British copyright existed, *i.e.*, the right to prevent their writings being utilised without their sanction. They submit that the rights of self-government do not warrant the appropriation of other peoples property (*vide* para. 9, of Sir J. Thompson's despatch).

When the Colonial Office had this question before it in 1890, it felt constrained to refuse Canada's request that imperial sanction should be given to the Act of 1889, not only because it was *ultra vires* but also because it was impracticable, uncalled for, and unjust—impracticable, owing to the difficulty of arranging licenses in a manner equitable to the authors whose works were reprinted, and because it would sap the fundamental principle of the law of copyright, which is, to allow an author *full control over the product of his own labour* ; uncalled for, because Canada already had cheap literature under the Act of 1847 ; and unjust as not allowing for the different values of author's writings.

The committee ask your Lordship to bear in mind that your predecessor was a member of the Royal Commission on Copyright, and they hope the Colonial Office will not be led to reverse its previous decision without fresh and far more cogent reasons than have yet been brought forward to justify such a step. The reply of the Colonial Office practically was: we have not the power to authorise this Act, and we should inflict an injustice on authors if we did. And the request preferred in the Despatch under consideration is that we should assist Canada to tamper with the rights of authors outside her dominion and not under her control.

Canada, on previous occasions, asked for cheap literature ; she now asks the Imperial Government to help her to establish *commercial protection* for her printers, at the expense of the owners of the property she would thus, without their consent, utilise on her own terms.

They would also point out that the change proposed by Canada would jeopardize the rights of British and Canadian authors to copyright in the United States. Already the United States Government have taken action on the subject, and they are strongly urged by authors and publishers in America to withdraw the proclamation if our law is so altered as to admit of their copyrights being reprinted in the adjacent country without their sanction. In this connexion, they ask attention to the letter from Mr. Mills, Messrs. Longman's manager in New York, which is enclosed herewith, and especially to the reference to Canada's ignorance of the whole proceeding.

Reprinting in Canada is also at variance with England's declaration to the United States, and must lead to serious ill-will on their borders. If the United States withdraw their proclamation, this reprinting will expose British authors to two pirating countries, viz., the United States and Canada.

They submit also for your Lordship's consideration that we cannot accede to Canada, without doing the same to all the other Colonies and thus disintegrate the whole of the copyright law.

France, also, would have a grievance. Two millions of the population of Canada are of French extraction and read French copyright books.

The committee wish to point out to your Lordship that, in their opinion, every reasonable concession has been made to Canada already. She has all the benefits of copyright accruing to the United Kingdom, and her people have been specially considered in the Act of 1847 and consequent legislation, but, in this Despatch, Canada, for the first time, asks Great Britain to alter and curtail the area of those laws to enable her to provide extra employment for her printers.

The committee would, however, draw your Lordship's attention to the hindrance to providing cheap editions for Canada, found in the 15th clause of the Act of 1842. If an

author prepare a special cheap Colonial edition of his work, he cannot exclude copies of it from his home market unless he takes out Canadian copyright, and this would not protect him in Australia or elsewhere. Would it not show Canada our desire to meet her readers' wishes, as far as possible, if a short Act were passed to exclude Colonial editions from the home market without the copyright owner's written consent, even though lawfully printed within the British dominions?

They feel, moreover, that the commercial desires of Canada would be gratified by such a course, and that it would remove some authors' objections to preparing a Colonial reprint, and also act as a stimulus to Canadian publishers to come forward and make arrangements with authors for both the Canadian and American markets. These markets are so intermixed that they cannot well be dealt with separately.

With every disposition to meet Canadian views, they desire to impress on your Lordship the urgent need and absolute necessity there is for maintaining *an author's control over his own works*. The reasons for this have been presented on several occasions, and a departure from this course would sap the very foundations of copyright, and would be so retrograde that it would, in their opinion, be unworthy of a highly civilised community such as the British Empire, and shake the confidence of other countries in England's fidelity to her engagements.

The committee venture also to draw your Lordship's attention to tariff and royalty legislation in Canada during the present year, and to ask you to point out to the Canadian Government that it will, if acted on, cause the Order in Council issued under the Act of 1847 and Canadian Act of 1850 to be inoperative, and consequently render the importation of *any foreign reprints* into that Dominion illegal.

I have, &c.  
 FREDERIC R. DALDY,  
 Hon. Sec. of the Copyright Association.

On their behalf also of the Society of Authors and the other bodies represented on the Joint Committee.

Enclosure 1 in No. 82.

NOTES and OBSERVATIONS on each Paragraph of the Despatch from Sir JOHN THOMPSON on Canadian Copyright, May 1894.\*

1. Introductory.  
 2. The Imperial Statute of 1842 did not give the *publisher* any interest except such as the author might choose to sell to him. Copyright is in no sense a monopoly. It involves a new creation, whereas a monopoly implies an interference with a liberty previously enjoyed by all. Copyright property requires special protection, because it cannot be ear-marked, and is so easily filched.

The last lines appear to us to be a confusion between the title to, and the realisation of, property.

3. The publisher has no right to be dissatisfied—copyright only concerns the author and the reader. Unless a publisher buys an author's rights he has no *locus standi*, and then only as an author. The reader got his market satisfactorily supplied and has not expressed dissatisfaction.

The protests he referred to were satisfied by the Act of 1847, and the Canadian Act of 1850.

4. Earl Grey only speaks of the "rights of colonial authors and the interests of the colonial public." He does not consider the interests of the publishers or reprinters. These are left free, subject only to the legal rights of property.

5. When Earl Grey refers to "the Royal Sanction," he assumed it would be exercised with some discretion, and would be conditional on the rights of British authors being duly cared for. As stated in reply to par. 3, these rights were satisfied in 1847 and 1850.

6. This settled policy of the Imperial Government has not been interfered with. The assurance has been fulfilled, for England legislated and defined the limit to which a colony might legislate, and thus avoided the necessity for any Imperial veto.

7. We show that Earl Grey did legislate in accordance with the spirit of his despatch, and the result was substantially the same. The Act of 1847 was in satisfaction of this relief, and Canada was afterwards allowed to legislate for her authors (not ours) and her public.

8. No understanding with the Colony was called for. There is no evidence that the "Foreign Reprints Act" was intended to be partial or temporary, or that it fell short of what had been promised. Legislation completely carried out her wishes as far as then promised or expressed.

9. Lord Grey only undertook to relieve the author and the reader. The author was relieved by allowing the Colonies to legislate for *their* authors, and by the Act of 1886—the reader by Act of 1847; but Canada's mode of describing the concession seems neither just nor generous. Surely the rights of self-government do not warrant the appropriation of other peoples' property, whether authors or tailors.

Here again appears a confusion between *the title to* and *the utilization of* property.

10. The same style of language pervades this clause, and surely hardly befits a State paper. The author's royalty is stigmatised as a "tax," suggesting that it is an unjust imposition, and that the British author who has *volens volens* to give up his property is "privileged" because the price of so doing is claimed by him, a price which he had no voice in fixing, and which is too seldom paid.

11. In March, 1870, copyright owners were aware of Canada's not collecting the author's royalty, and called attention to her studied negligence. Not a monopoly, *see* par. 2.

12. If great pains had been taken to collect this royalty, why were the books not stamped as in other Colonies? If the royalty was odious and unjust, why did not Canada repeal her Act of 1850, and let the Order in Council be revoked? Canada surely knew the advantage that Act was to her, and yet shrinks from carrying out its provisions. Can British authors trust a Colony which refuses to carry out her own Acts of Parliament, and, in this clause, actually refuses to do so, to legislate for them? and yet she asks for further concessions to stimulate her to honesty. She will not carry out her contract unless she gets more than the contract gave. Is this *bonâ fide*? Is it honourable? Is it a ground for trusting her again?

13. The Canadians had the power to prevent this but were too indifferent, and took no trouble to arrange with the author. This simple step would have stopped most of her complaints. It is too grossly unjust to seek an Act of Parliament to satisfy this negligence by robbing British authors. Others may be inclined to give a different meaning of the word "proper."

Canada surely knows that we cannot and ought not to interfere with America's actions, and also that what she urges is rather a trade than a copyright question, and that it cannot be conceded without upsetting copyright property for the doubtful benefit of a few reprinters.

The publishing interest here referred to is only the reprinting interest.

14. *See* note on par. 4.

15. Canada's requests, as here referred to, were never thought "reasonable." Canada knows we never made any arrangements with the United States, and that we cannot regulate foreign municipal law. It is too absurd to imagine we presented the United States with any monopoly. The present state of things has arisen from *her* legislation, with which we had not anything to do.

16. We are obliged to assert boldly we never gave Canada *any* assurances which have not been fulfilled.

17. We must repeat we had no hand in the "improvement" of the law. It was not altered by any action on our part. By United States legislation, Canada's position was improved just as England's was—no more, no less—for Canada can now copyright a book in her own country, the rest of the British Dominions, and in the United States by printing it there, a very easy process for Canada. England is, like Canada, debarred from reprinting either an American or English book copyrighted in England, or an English copyright book, without the author's sanction.

18. We all admit that copyright law is imperfect, but not in the sense in which it is described in this despatch.

19. We have not granted protection to American copyright books by any Act since 1842, and then we made first publication here the essential condition for all copyright. Canada now has as great privileges as the mother country, but neither they, nor we, nor Americans can take an author's property and reprint it without his consent, nor can we, in fairness to him, ask to be allowed to do so. If England cannot prevent moral robbery in America, that is not a reason for encouraging it in Canada. Canada can now reprint with the author's sanction.

20. Under the Act of 1886, publication in the Colonies gives copyright throughout the whole British dominions.

It is no concession at all as regards reprints, but a very valuable one as regards copyright pure and simple. Canada seems jealous of America and all countries which respect copyright as distinguished from reprinting.

21. Consideration was given to the report, but the proposals were *ultra vires* and unfair to the owners of copyright.

22. Copyright *property* only is made secure. *Trading* in it is *left free*. Canada has not been in the habit of applying in time. Active tradesmen watch the market. Canada asks for legislation to save herself the trouble of doing so. By her own showing, arrangements have been already made with American publishers *before* Canada made her offers.

23. Assent was withheld because the Act was *ultra vires* and unfair to owners of copyright. See par. 21.

24. The grievance has never been admitted *as stated*. England has never admitted any grievance which has not been remedied either by the Act of 1847, or that of 1886, or by the right given to Canada to legislate for her own authors.

25. It is most unfair and trifling with the subject gravely to put forward such a positive statement. Lord Grey said no more than he carried out. He said he "relied on 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." By the Act of 1847 he left to the local legislatures "the responsibility of passing such enactments as they might deem proper for securing the rights of authors, and the interest of the public." This Canada did in 1850, and the Act received the Royal Assent and became operative by an Order in Council, dated December 12th, 1850. The copyright law of this country then ceased to be operative, where repugnant, so far as excluding reprints from Canada. Practically, authors and the public were satisfied, and *are now*, for neither take any interest in Canada's trade demands, either from not being aware of any such demand, or from disapproval of it.

26. The Royal Commission only recommended the permission of licensed editions for the benefit of Colonial readers where the public were not able otherwise to be adequately supplied with any particular book. This condition is entirely omitted from the despatch, and therefore its bold assertion is both at variance with fact and misleading. No case has yet arisen to which the suggestions of the Commission would apply.

27. Canada was courteously asked if she would like to join the Berne Convention and elected to do so, and now, though it remains as it was formed at that time (1886), she desires to withdraw. Why this instability?

28. If Canada at that time desired the reprinting facilities she now asks for, why did she give her assent? Surely it is no argument for joining a convention, that you can withdraw afterwards. Great Britain is made the judge of the propriety of giving notice of the withdrawal of any of her Colonies; she may, of course, do so on their request, but it rests with the Imperial Government to decide.

29. Canada's withdrawal rests with England, and is now peculiarly wanton; for other countries, such as America, Austria and even Japan, though not members of the Convention, are making efforts in the opposite direction, viz., to strengthen the foundations of copyright property. Can Canada have realised that her withdrawal might exclude her from the benefits of the Act of 1886, and restrict the copyright of authors first publishing there to that Dominion? Surely this drives Canadian authors to publish outside the Dominion, and unnecessarily discourages her printers and publishers.

30. No one disputes Canada's right to ask for withdrawal, but, we repeat, the acting on that request rests with the Imperial Government, and by the Convention it is in England's power to decline to do so.

31. No. The publishing interest is improved, because, as a member of the Convention, the publisher can assure the author of the widest area for copyright if he is allowed to publish the book. It is only the reprinter, who wants to filch an interest in the copyright, who is injured. England regards the Berne Convention as favourable to authors and copyright considers their interests, not reprinters. The conditions of society surely have not greatly changed within the last eight years since Canada joined the Convention. Though Canada's population is sparse, literature is easily accessible in all parts, and the power of reprinting asked for would not improve matters. The absence of circulating libraries proves that the people are satisfied with present means of supply. France would naturally be annoyed by Canada's withdrawal, because two million Canadians are French and require French literature. There is no complaint from French Canadians that they cannot get the books they want.

32. See observations on paragraphs 29 and 31. Canada is not asked for reasons, but she is expected to act in a courteous manner when she prefers a request. Her "determination" must be sanctioned by England.

33. No Canadian legislation is necessary. If it were, Canada's conduct would be prominently bad, for she joined it in 1886, and has not yet done what she herself considers necessary to give effect to her own action.

34. This despatch seems to ignore the difference between the two countries. England's settled policy is a free trade policy; America, though gravitating towards free trade, is essentially protective in her trade and labour policy. Can England be expected to reverse her policy for the sake of Canada's printers?

35. America granted England copyright on the faith of certain facts existing, and if we alter the *status quo*, it is too obvious she would consider herself tricked and could withdraw her proclamation. She has already taken up the question, for she sets much value on Canada's inclusion, as relieving her from reprinting on her borders. Is it likely American authors would allow their works to be reprinted by an adjacent country when she gave that country copyright on the faith of *our* statements that this could not be done. Therefore, England and all the other Colonies are to lose American copyright merely to give Canada an unrighteous opportunity of pandering to her reprinters.

We must repeat that no promises of redress were made except those already fulfilled. If so, When? and Where?

36. America evidently relied on the existence of these facts and gave England and her Colonies a considerable privilege in consequence.

37. The effect of these facts stated at a time when England knew that certain consequences would depend thereon is practically to undertake that the state of things then existing would not be altered, especially without America being consulted.

38. It is certainly implied that these facts would not be capriciously changed. Can there be any doubt as to America's action if they are? England would be responsible for the denunciation of the Berne Convention as regards Canada. Canada now has American copyright on this basis as well as the rest of the Empire.

The Berne Convention had nothing to do with England's statement to America, but if America chooses to obtain copyright in Britain by publishing in Canada—which she can do under the Acts of 1842 and 1886—surely America should have something to say about Canada's withdrawal from the Berne Convention.

39. Canada says she asks for no other conditions, *after* she has upset all our copyright laws, because she knows each part of the Empire would be similarly treated.

America laid stress on Canada's inclusion, on the same footing as England, and it is absurd to suppose that the limitation of Canada's copyright would not affect America.

40. This is not the English policy. The result is due to Canada's apathy in making commercial arrangements. England's action in this is for the interest of British authors and Canadian readers.

41. As stated above (par. 22), Canada's remedy is to outbid the Americans, and control, not only her own, but both markets.

42. The necessity for type-setting in America affects every one, not only Great Britain, but even Americans themselves. England did not "accede to" the arrangement, and considers the necessity of type-setting in America most injurious to authors. Canada's bad faith about the author's royalty under her Act of 1850 does not prompt authors to trust her in any other arrangement.

43. Quite accurate; neither Canadian author or reader asks it. A careful perusal of this despatch is absolute proof of this.

44. Canadians can buy for both markets, Canadian and American. It is a question of terms.

45. See par. 44. The inconsistency charged here is due to a confusion between books reprinted before the American proclamation and the demand for English copyright books which that proclamation has stimulated.

46. The disadvantage is due to the unwillingness of Canada to give the same or better terms than the Americans.

47. Our Law Officers, as well as Lord Selborne and the present Lord Chancellor, differ from Sir J. Thompson, and it is obvious we ought to rely preferentially, on their opinions. Canada's own Courts differ from him: see *Smiles v. Belford* on appeal (1 Upper Canada, reports 436). See also the Colonial Office Despatch of March 25th, 1890. Besides, since that time, Canada has thrown off the mask and has gone far ahead of any grounds previously taken up. No assurances of *such* legislation were ever given.

48. Yes; that policy always has been to "give the author full control over his own property, and never to interfere with the *commercial* management of it."



49. The author is supposed to be compensated by a royalty, not a Customs duty. It is not denied that the use of the property would be made without the author's consent. Every effort has been made to show Canada the effect of such withdrawal on herself.

50. Canada has no right to withdraw unless England is willing. England has power, if she thought it desirable, to refuse her request.

51. The Committee's statement is true and most important. Lord Salisbury's statement should not be wantonly made untrue by subsequent changes, except after consultation with the party to whom he made it, viz., the United States. We cannot help Canada's conduct, but mere self-respect prevents our aiding and abetting the wronging of others for her benefit.

She has no wrong for which she can ask redress. Can she be serious in saying "Canada's commercial interest is placed at the disposal of a privileged class"? When Canada resorts to *veiled threats* it is only kind to her not to notice them. We are discussing an important question which is engaging the attention of statesmen. Canada is at no disadvantage. She enjoys all the rights that England enjoys under existing copyright laws, and one extra advantage conferred by the Act of 1847.

The confusion of the commercial interests of Canada and Canada's market with the title to copyright is again apparent here.

52. Quite true. This is also the international view.

53. But America has shown a disposition to adopt it. The manufacturing clauses are confined to books, photos, chromos, and lithographs. It has just been decided in *Novello and Co. v. The Oliver Ditson Co.* that they do not apply to music. We repeat we cannot control United States laws or actions, but we aim at reprinting not being required, because it is obviously against the author's interest. Does Canada, in the last sentence, ask us to diminish her field of copyright because her printers will be satisfied with what they can take from what fields are left.

54. Undoubtedly. It would be depriving the author of the control of his property.

55. The statement referred to is true. A book has other qualities besides its money value. It gives forth views the author wishes to disseminate. It enhances his reputation; it gives him notoriety, &c. But all this would be destroyed if he were *unable to modify in future editions what he desires to say*, or to bring up his information to the newest standard of knowledge. If the United States publisher does not pay more because he has the Canadian market, surely it is easier for the Canadian publisher to outbid him in negotiating with the author.

56. If so, the Canadian could acquire both rights advantageously to himself by the despatch's own showing; but the statement is very confused. If the American bought the right, how could the author sell it afterwards to the Canadian? Probably the American bought one book, which so far increased the author's reputation, that his subsequent work became much more valuable. This instance goes far to show that the Canadian publisher can now buy both markets with advantage, *if he will exert himself to do so*, and publish in both markets.

57. This despatch does not show any "grievance" except the disappointment of the reprinter, and is asking the Imperial Government to legislate at the expense of the British copyright owner for the Canadian reprinter's benefit. We cannot find when or where the Imperial Government promised to redress "*this grievance*." The grievance is constantly shifting. At one time it was the public, now it is the reprinter, that is the great sufferer, and at all times the Canadian author is ignored.

58. We think the opinion quoted is true. For "tax" read "author's royalty." For "was collected" read "should have been collected," if only to show that Canada could honourably carry out her own undertaking. Canada cannot be ignorant of America's action, but wilfully ascribes it to Great Britain. Are such statements trustworthy? All know that copyright slightly enhances the price of a book, just as having to pay for the bricks or stones of a house increases its cost. Would Canada say, therefore, steal them? It rests with Canada to show that the Canadian cannot acquire the copyright. The Canadian readers seem to desire to honestly pay for copyright, for they make no complaint of a slightly enhanced, not doubled, price.

59. The "Canadian press" is not locked, but Canadians seem too indolent or ignorant of business to utilise it. In a State Paper, the Premier of Canada actually talks of banishing British literature because he is unable to discriminate between honest royalty-paid literature and that which, as we can prove, is smuggled in with the Government's connivance. Canada's conduct does not prove that the author's position would be bettered by the Act of 1889.

60. Canadian reprints would only take the place of American, and therefore the result to British authors would be the same.

61. Inconvenient to Canada to carry out her own undertakings! Why should a government thus bespatter a people? Canada can give up collecting this royalty when she likes, but by refusing the *quid pro quo* under which foreign editions are admitted, and compelling us to withdraw the Order in Council under which they come in. Then every copy could be seized as a piracy. The Act of 1847 makes the royalty essential to the efficacy of the Order in Council.

62. Australia is ahead of Canada in literature and authors because she fairly protects their property. It is not a case for parliaments, but for the exercise of common honesty.

63. This might be the outcome of the isolated position Canada takes up. Canada attacks the literary property of all nations, and thus places herself outside the arrangements of civilised society even more than Liberia or Haiti, and in the same paragraph is shocked at the idea that her interests should not be considered more than those of the rest of the world.

64. Either Canada has overlooked the interests of authors or cannot understand them.

65. Competition creates opportunities for all. Canada cannot sit still and say she has no opportunities. Her failure to grasp opportunities is due to want of enterprise fostered by the fascination of "building the house with bricks belonging to someone else and taken without his sanction." The royalty to be received by an author under the Act of 1889 is not guaranteed by Canada herself even.

66. The Despatch complains again that England made concessions to the United States, having said previously (par. 36) that she did not do anything of the kind.

How is Canada's condition worse, except that, like all parties to the Convention, she must pay now for property which she could previously use without payment?

67. Copyright laws are to protect property, not trade.

68. Cheapness of production is still more in favour of the Canadian producer. If Canada, as here acknowledged, can compete in one case, why not in all? Is not this self-stultification? Nothing hinders competition but want of enterprise. Is it dignified to cry out for protection without helping yourself according to your opportunities? More than 50 books have already been published in Canada with the authors' sanction, and 20 times as many might be, without let or hindrance. A Canadian can print his book in the United States more easily than an Englishman can. His true remedy is to compete for British copyrights like the rest of the world.

69. As remarked before, we cannot control United States legislation. England is affected as well as Canada, but we think it more dignified not to complain of what we cannot prevent.

70. Canada seeks the encouragement of her reprinters, and to promote this all other interests may "go to the wall." Does Canada think she can, in common honesty, ask the Imperial Government to help her pillage British and Canadian authors to benefit Canadian printers, even if this could be the result of the action? The granting of "any number of licenses" to reprint British books would soon kill the royalties by "competition," which Canada does not like.

71. No law prevents Canada "selling in its own market," but it must keep within legal limits and not take the author's profit to put it into its own pocket.

72. So it would be.

73. Canada's proposed action would hinder the production of new copyright books by filling her market with very cheap reprints of books already published. This result was experienced by America.

74. If it benefited Canada why should she hold back because it would also benefit the United States? Would it not be possible to maintain the duty except against England and her Colonies if Canada wishes to do so?

75. The present low royalty is undoubtedly a hardship on British authors, and was only conceded to benefit Canadian readers, whose market was too small to justify the preparation of special editions for it. It is only necessary to stamp all imported copies, and render all unstamped copies offered for sale liable to seizure, to make the present laws effective.

76. This should apply to the Act of 1847 royalty, but the similarity of the rate with the tax on books seems to be accidental.

77. That inference is not justifiable and does not appear to be put forth seriously. Any fixed royalty is unjust to the author.

78. Self-government only within her own dominion and subject to existing laws and rights.

This was for valid reasons. The Act of 1875 indicates how Canada would use unrestrained liberty. In section 4, subsection 2, we read that "in the case of works of art, under which term original paintings, drawings, statues, sculptures, or photographs, etchings, and engravings are classed, they must be produced or reproduced in the country." Can we imagine Sir J. E. Millais reproducing a painting, or F. O. Murray an etching, in Canada, for the sake of Canadian copyright therein? And yet both are seriously injured by unauthorised photographs or other reproductions. Statesmen understand what Canada asks for, but cannot lend themselves to the promotion of such barefaced injustice.

79. The probability is that "works of fiction" are here referred to, as they have a more widespread sale in Canada than other books. Now these are being copyrighted in the United States so generally that the American reprint will soon become a thing of the past. Canada's past conduct has destroyed English authors' faith in her honesty, and has not prompted them to look favourably on more important concessions, even if Canada guaranteed the proceeds, which she shrinks from doing.

80. Who is to fix the retail price—the author? or is it to be done in spite of him? How provide against licensed editions, each less in price than the last? How provide against stories in a cheap form being given away as a supplement to a newspaper or as a bonus on other goods, and no price asked for it?

81. But we do. We attach importance to and differ from the Despatch on both points.

Smiles *v.* Belford and the opinions of our Lord Chancellor and of Lord Selborne have settled this point. What Canada desires is that we should give her power to legislate on our copyrights as well as on her own, and the conduct of Canada throughout this controversy in setting herself in opposition to the laws and tendencies of all civilised nations, merely for the doubtful gain of the printing interests of her Dominion, compels us to resist this.

82. The Report of the Royal Commission on Copyright was only favourable to Canada in so far as it suggested a way by which her readers might, if necessary, secure cheap literature. No necessity has ever arisen for acting on the suggestion, for cheap books are abundant.

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Enclosure 2 in No. 82.

15, East 16th Street, New-York,  
October 16, 1894.

DEAR MR. LONGMAN,

I THINK you are interested in all copyright matters, and, of course, you are pretty well informed as to the working of the recent Copyright Act here in connexion with our own operations. It has occurred to me, however, that perhaps you have not had your attention called to one of our recent experiences, which is interesting as a comment upon what would have been in the absence of international copyright. The success of Mr. \_\_\_\_\_ books here, as well as in England, has had its effect, naturally, upon such of them as were published prior to the Copyright Act. "The \_\_\_\_\_," for example, before the success of "\_\_\_\_\_" dragged along rather slowly in spite of its acknowledged merit; but we were succeeding in working up a very respectable sale for it when "the pirates" discovered that it was not copyrighted. A 50-cent edition was announced by a Chicago house, but before it could be placed upon the market, another house offered a 25-cent edition, and within a couple of weeks copies of the book were sold at wholesale for 3 cents! Although our sale has not entirely stopped, it has, of course, been very seriously affected, and I suppose, except for the start we achieved before the reprinters got wind of the book, we should have failed to sell more than a very small edition. Of "\_\_\_\_\_" a book of similar size, we have already sold nearly 12,000 at \$1.25, and the royalties to be paid to Mr. \_\_\_\_\_ amount to about 45%.

It would seem, therefore, that copyright has been a very distinct benefit to the English author who had something good to offer, and it would be a very serious blow to English authors generally were anything to occur to interfere with the smooth working of the copyright understanding between the United States and England. I imagine there are always influences at work here to discover some means of nullifying this understanding; "the pirates" opportunities are gradually diminishing in number, and, from their point

of view, it would be worth a very considerable effort if the present copyright protection could be terminated. It does not seem unlikely that the present attitude of the Canadians on the question of copyright is something of a menace to the continuance of the good understanding between the States and England. If their demand for unlimited control of the question of reprinting in Canada should be granted, for instance, it would be almost impossible to prevent a constant dribbling of contraband cheap editions across the frontier, which would surely lead to retaliatory measures from this side. In view of the fact that the Canadians cannot create a paying book market under any circumstances—they lack the population which is essential—it seems quite unreasonable that interests so large, and so full of possibilities, as those of English writers in the United States should be jeopardised.

You will be interested to know, in connexion with the Canadian desires, that I have lately received from a Toronto publisher, holding several sets of plates, a proposition that, instead of paying 10 per cent. royalty, in future he should be allowed to pay 1 cent per copy on all editions printed and sold in paper covers (they sell nothing else, by the way). His argument was that he has to sell books so cheap that he cannot afford to print any more on the regular 10 per cent. basis. He proposes to pay for \_\_\_\_\_, for example, (2*l.*) two pounds per thousand copies. If this is his proposal under a copyright law, which secures to him the sole right to print Canadian editions, what can be expected when such right to print will be open to anybody choosing to set the type of a popular book? I have not yielded to his arguments, of course, but it is an open question whether we shall not be compelled to make some concession in the end.

I have been rather surprised to find, on inquiring of chance Canadian visitors here, that the agitation for these unlimited rights of reprinting in the Dominion is confined to, and, indeed, known to, a very small section of the people, and that the interested section, from the point of view of printing offices. More than one bookseller has expressed in conversation not only ignorance of the scheme in detail, but positive opposition to the general idea. I gather that the booksellers, as distinct from the book printers and producers, have not been allowed to know too much of what was going on.

I suppose you have heard of the great success of \_\_\_\_\_ here. The publishers claim to have sold over 100,000 copies already. This appears to have been very greatly in excess of their most sanguine expectation, and of course could not have been done in the absence of copyright.

T. Norton Longman, Esq.

Believe me, &c.  
C. J. MILLS.

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No. 83.

F. R. DALDY, Esq., to COLONIAL OFFICE.  
(Received November 10, 1894.)

[Answered by No. 85.]

“CANADIAN COPYRIGHT.”

Aldine House, Belvedere, Kent,  
November 9, 1894.

MY LORD MARQUESS,

Your Lordship, in reply to my letter\* asking you to receive a deputation on this subject, informed me that you did not think an interview would be appropriate until the Official Committee who had the matter in hand had made their report.

In anticipation of this report, and in consequence of Sir John Thompson's visit to this country, I now write to ask your Lordship if you would kindly let me know when the deputation will have the honour of waiting on you; and to say that I should be much inconvenienced if your Lordship could let me know a week before the date determined on.

Sir John Lubbock would probably introduce the deputation, and it would be representative of the various bodies mentioned in my printed letter† of last month.

I have, &c.

FREDERIC R. DALDY,  
Hon. Sec. of the Copyright Association.

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\* No. 56.

† No. 82.

No. 84.

**THE LONDON CHAMBER OF COMMERCE to COLONIAL OFFICE.**

(Received November 13, 1894.)

[Answered by No. 86.]

“CANADIAN COPYRIGHT.”

Botolph-House, Eastcheap, London, E.C.,

November 12, 1894.

MY LORD MARQUESS,

REFERRING to a communication, on the subject of Sir John Thompson's Despatch of May 1894, recently addressed to your Lordship by Mr. F. R. Dalry, on behalf of a joint committee which was organised by this Chamber, and includes, besides the other bodies specified therein, its printing and allied, music publishers, and fine art and photographic sections, I am instructed by my council to ask whether your Lordship would be willing to cause copies of any future communications on the subject of Canadian or other copyright to be sent to this Chamber, direct, in all cases where Her Majesty's Government are inviting the views of representative bodies thereon? The four trade sections mentioned above comprise upwards of 100 firms in the publishing trade, and in many instances are not represented by any other organisation. These sections fully endorse the representations made in Mr. Dalry's letter, and the object of the present communication is to confirm this fact, and to express the hope that your Lordship will view favourably the request that the Chamber may receive any future communications, confidential or otherwise, that may be made by Her Majesty's Government to other bodies interested in copyright questions.

I am, &c.

**KENRIC B. MURRAY,**

Secretary.

No. 85.

**COLONIAL OFFICE to F. R. DALDY, Esq.**

Sir,

Downing Street, November 16, 1894.

I AM directed by the Marquess of Ripon to acknowledge the receipt of your letter of the 9th instant,\* and to acquaint you that he will be happy to receive the deputation on the subject of Canadian Copyright at 2.30 on Monday, the 26th instant.

I am, &c.

**JOHN BRAMSTON.**

No. 86.

**COLONIAL OFFICE to LONDON CHAMBER OF COMMERCE.**

Sir,

Downing Street, November 17, 1894.

I AM directed by the Marquess of Ripon to acknowledge the receipt of your letter of the 12th instant,† and to inform you that the wish of the London Chamber of Commerce to be furnished with copies of further communications as to Canadian or other copyright, in which Her Majesty's Government desire the opinions of representative bodies, will be borne in mind.

I am, &c.

**JOHN BRAMSTON.**

No. 87.

**F. R. DALDY, Esq. (COPYRIGHT ASSOCIATION) to COLONIAL OFFICE.**

Paragon House Private Hotel,

West Cliff, Ramsgate, Essex

November 17, 1894.

I BEG to thank you for your letter informing me that the Marquess of Ripon will receive a deputation on Canadian Copyright on the 26th instant at 2.30.

\* No. 83.

† No. 84.

Will you kindly thank his Lordship for his courtesy, and inform him that I will arrange for the deputation at the time he has fixed and will be at the Colonial Office at the hour he has named?

Sir John Lubbock will introduce the deputation, and I hope Sir F. Pollock, Mr. Lecky, Sir A. Rollit, Mr. Longman, Mr. Murray, and others will attend.

I am, &c.

F. R. DALDY.

No. 88.

F. R. DALDY, Esq., to COLONIAL OFFICE.  
(Received December 11, 1894.)

Aldine House, Belvedere, Kent,

December 8, 1894.

MY LORD MARQUESS,

I HAVE the honour to enclose to your Lordship, herewith, two copies of a flyleaf about to be circulated amongst authors, and to the press, because I think a perusal of it may assist you in discussing Canadian Copyright with Sir John Thompson.

I also send your Lordship, in a separate cover, a reprint copy of a letter I addressed to the late Lord Derby when he was Secretary for the Colonies, which I have reason to think has not yet been brought under your notice.

This letter, I have reason to believe, influenced his Lordship in his treatment of the question, and shows that Canada's request, in this or similar forms, has already been twice refused, and is now pertinaciously pressed for the third time. I am not in business, and do not now hold Copyrights, but I feel so strongly the fatal results to all Copyright property which would arise from conceding Canada's demands, that I hope your Lordship will excuse me for thus occupying so much of your valuable attention.

I may take the opportunity to add that the late Earl of Carnarvon in 1874 also assured me, verbally, that "of course he should not give his consent to so crude an arrangement."

I have, &c.

F. R. DALDY.

Enclosure 1 in No. 88.

CANADIAN COPYRIGHT.

Copyright is now uniform throughout the whole of the British Dominions, including, of course, Canada.

It is based on the following principles:—

1. That a work shall be first or simultaneously published therein.
2. That Copyright shall be independent of the place of printing, and of every other manufacturing shackle.
3. That the use of it as property shall, whilst it is Copyright, be within the author's control.

Canada now seeks to alter these bases, and has asked the British Government to sanction arrangements to take away Copyright in Canada from all persons but Canadians.

If such an Imperial sanction can be obtained, Canada offers to legislate so as to give British authors Copyright there for 28 years, *if they reprint and republish the work in Canada within one month of its original publication.*

But if an author does not reprint and republish his work there within a month, each Canadian printer and publisher may get a licence to print an edition, without the author's consent, on paying to the Canadian Government, for the author, 10 per cent. of the retail price of such edition. The retail price of every such edition is to be fixed by the publisher *without consulting the author.*

The proposed Bill is silent as to whether the royalty is to be paid on copies *sold*, or copies *printed*. The Canadian Government is not to be responsible for any royalties not paid to it.

The following reasons, amongst others, show some of the injuries such legislation would inflict on British authors:—

It undermines the general recognition of the rights of Copyright property, which has now become almost universal.

It interferes with the law of vendor and purchaser which prevails throughout the British Empire in respect to Copyright equally with all other personal property.

It takes from the author the control of his own property, and hence hinders his improving or correcting or enlarging his own writings.

It forcibly deprives him of the benefit now belonging to him in Canada under the Imperial Copyright Acts, and is thus a breach of faith.

It sanctions the appropriation of his property by others without his, the legal owner's, consent.

It weakens his title to his own property.

It injures his reputation by allowing the continued circulation of unimproved editions, even if the author enlarged his work.

It injures the value of his British edition, because the Canadian edition could be imported into the United Kingdom and the other Colonies, and compete with it.

It substitutes for trade contracts, on agreed terms, an inadequate royalty not guaranteed.

It clogs his property with the condition of local manufacture.

It was not recommended by the Royal Commission for cases where readers were adequately supplied.

It is at variance with the Free Trade principles of Great Britain.

Canada has no claim on English Copyright property above other civilised nations, all of whom *recognise the author's control over his own works.*

All that Canada can fairly ask may be obtained by less violent and more suitable means.

The only advantage derivable from reprinting without the author's consent will accrue to book manufacturers in the Dominion at the expense of the author and the general public.

Any such dealing with Copyright property in Canada will affect future arrangements with the Australian and other English-speaking possessions.

It would probably destroy our present means of securing Copyright in the United States of America.

It diminishes the Copyright interests of all who belong to the Berne Convention.

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Enclosure 2 in No. 88.

(Private and Confidential.)

Art Journal Office, 294, City Road, London,

April 3, 1883.

MY LORD,

I HAVE the honour of drawing your Lordship's attention to the subject of Copyright, because you will in the immediate future have to decide questions connected with it which seriously affect Copyright property, and because circumstances have created an opportunity of improving our present Imperial legislation, and of determining the relations respecting Copyright which shall in future exist between the Colonies and the Mother Country.

Your Lordship is doubtless aware that a treaty between the United States and ourselves is under the consideration of both Governments. Also that Canada has requested us, as a condition of her becoming a party to that treaty, to repeal the present Copyright Act of 1842 so far as it affects that Dominion.

Knowing that Canada seeks the power to reprint English Copyright works on forced terms without the author's sanction, I venture humbly to submit to your Lordship that an unmodified compliance with Canada's request will be disastrously unjust to the Copyright owner. Also that many advantages will attend grappling with the whole subject, by consolidating and improving our present laws, as in the draft sent herewith, or in a somewhat similar Act, and providing, as in the Extradition Act of 1870, that Canada, or any Colony, may legislate herself out of this consolidated Act by making similar provisions through its own Parliament. See Section 24 of enclosed draft. The consolidation of these laws was recommended by the Royal Commission, which reported on this subject in 1878.

I had the honour of assisting Mr. Sackville West in preparing the draft treaty he has submitted to the United States Government, and I can assure your Lordship that the consent given to it (with some modifications not yet received) by that Government is essentially influenced by the fact of its extending to Canada and all other British possessions.

I am aware that Canada by her present Copyright Act enables Copyright owners in countries with whom Great Britain has Copyright conventions (but not British authors), to acquire a special local Copyright under it by republishing in that Dominion, and that therefore we might leave her becoming a party to the treaty to her discretion, and point out (if Canada persistently refused to join in the treaty) to the United States that her Copyright owners can compass the intention of the treaty by the simple act of republication in England; but this would hardly be satisfactory to the United States, and I think your Lordship may much prefer obtaining Canada's direct concurrence, unless she demands too high a price for it. It would, however, manifestly be futile to purchase a treaty with the United States, with the object of recognising the rights of literary property, at the cost of sanctioning a destruction of those rights within our own dominions.

Canada is, I know, anxious to acquire the right to legislate for herself on this subject, and the concession I have suggested would formally satisfy that ambition; but her further desire to be allowed to reprint British Copyright works without the author's sanction is so repugnant to the legislation of all civilised countries, and tends so much to weaken the very nature of Copyright property, that I hope it will never be conceded. And for the following amongst other reasons:—

Because it undermines the general recognition of the rights of Copyright property, which has now become almost universal.

Because it takes from the author the control of his own property, and hence hinders his improving or correcting his own writings.

Because it forcibly deprives him of the benefit now belonging to him in Canada under the Imperial Copyright Acts.

Because it sanctions the appropriation of his property by others without his, the legal owner's, consent.

Because it permits this appropriation on forced terms, and thus he is inadequately remunerated.

Because Canada has no claim on English Copyright property above other civilised nations, all of whom recognise the author's control over his own works.

Because all that Canada can fairly ask may be obtained by less violent and more suitable means.

Because the only advantage derivable from reprinting without the author's consent will accrue to book manufacturers in the Dominion at the expense of the author and the general public.

Because any such dealing with Copyright property in Canada will affect future arrangements with the Australian and other English-speaking possessions.

Because, if Canada be allowed to reprint without the author's sanction, English authors would be seriously injured thereby in their negotiations with the United States.

Because it interferes with the natural law between vendor and purchaser which prevails throughout every part of the British Empire in respect to Copyright, equally with all other personal property.

Canada has not the power to legislate generally on Copyright under the British North American Act of 1867. The Imperial Government, with, I think, much wisdom, retained control of this subject, because separate legislation, unless harmonious, would, practically, destroy the value of such property to authors and artists.

Separate legislations by separate possessions, unless harmonious, would also be inconsistent with, and would probably jeopardise, existing treaty rights on this subject; for although we may modify our Imperial law without affecting the spirit of those treaties, it is, I fear, a violation of them to reduce the area over which we have contracted to give Copyright, and such a change would probably necessitate the re-negotiating of all these treaties.

It must be borne in mind that Canada, under the United States treaty, would acquire the right of Copyright throughout the whole British dominions for American works copyrighted there, and that, from her proximity and greater intercourse with the United States, she will be in a position to compete advantageously with the English publisher for many United States Copyrights, and thus develop an increasing printing and publishing business. Also, that under the accompanying draft she can compete for all English Copyright works, and will be placed on the same footing as the English publisher.\*

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\* This was accomplished by the Copyright Act of 1886. Copyright legislation was made use of instead of Treaty Arrangement with the United States.



It is highly probable that the simplification and consolidation of the Imperial law will greatly facilitate our negotiations with other countries. Indeed I know it will. At present the foreigner is bewildered when told that the rights of British subjects are contained in twelve different Acts. He cannot realise with any exactitude what those rights are, and after puzzling himself for months he abandons the whole subject in disgust; whereas, if we frame our law on the basis suggested, it will harmonize in character with that of France, Germany, and the United States, and be intelligible to those affected by it.

I shrink from trespassing further on your Lordship's time, and will merely add that, if I can be of any use in the carrying out of these suggestions, my time is at your Lordship's disposal.

I have, &c.

FREDERIC R. DALDY.

The Right Hon. the Earl of Derby, K.G.,  
H.M. Secretary of State for the Colonies.

No. 89.

MR. R. E. BRAY to COLONIAL OFFICE.

(Received December 10, 1894.)

(Extract.)

102, Union Avenue, Montreal, Quebec,  
November 27, 1894.

In the Canadian papers of this date is a report, concisely worded, of a deputation of English literary men who waited upon you in protest against the desire of the Canadian Government to abrogate the Copyright laws between this country and England.

I would humbly pray your Lordship to deal justly in this matter, from a moral and honourable standpoint and not one of political necessity. The desire of the Canadian Government in this matter is not the desire of the Canadian people; they have never been consulted in the matter. It is a disgrace to this country that under the pretence of fostering trade and commerce the people are deprived of their best interests.

Canadian cheap reprints mean the *vilest* quality of type, paper, and printing imaginable, the paper is of the very commonest—grocers' wrapping papers—and the print any worn-out type or obsolete styles that can be saved from the melting-pot.

This is just to enable one or two men to make money at the expense of a nation. No one who loves books or buys books will hesitate to pay a fair price for the same, providing it meets the requirements expected of a good book. Canadian reprints are only bought and sold by disreputable or ignorant booksellers, by all the better class ones they are taboo'd.

As a friend says "What is preferable to a cheap book is one that is honestly come by."

I therefore trust your Lordship will disregard the request of Sir John Thompson who speaks for the Canadian Parliament but not for the Canadian people.

No. 90.

THE MARQUESS OF RIPON to the EARL OF ABERDEEN.

MY LORD,

Downing Street, December 18, 1894.

I HAVE the honour to transmit to your Lordship a copy of a letter,\* which has been addressed to this Department by Mr. R. E. Bray of Montreal in connection with the proposals of the Canadian Government as regards Copyright, and I request that the writer may be informed that his letter has been received.

I have, &c.

RIPON.

No. 91.

THE MARQUESS OF RIPON to the EARL OF ABERDEEN.

[Answered by No. 109.]

MY LORD,

Downing Street, March 15, 1895.

You are aware that one of the questions which the late Sir John Thompson proposed to discuss with Her Majesty's Government during his visit to this country was that of the Canadian Copyright Act, which has already formed the subject of considerable correspondence.

\* No. 89.

It has been the cause of deep regret to Her Majesty's Government that, owing to his premature death, the personal discussion from which they had hoped that a satisfactory solution of this vexed question might result, did not take place.

The grave objections to some of the provisions of the Canadian Act in its present form, and the international difficulties and complications to which it would give rise if it were allowed to come into operation, have been fully dealt with in previous communications, and the correspondence which has taken place has failed so far to bring about even an approximation of view between Her Majesty's Government and your Ministers.

In these circumstances I am reluctant to continue a controversial correspondence from which no result seems likely to be gained, and the only course which appears to me to offer any prospect of a solution, is that, as soon as convenient, one of your Ministers, or some gentleman duly authorised by them and fully conversant with the subject, should come over and discuss the matter personally with Her Majesty's Government.

The interests in this country affected by the measure are extensive and powerful, and the persons concerned have become seriously alarmed, whilst those in Canada whose interests are at stake may naturally be becoming impatient at the delay which has taken place; and I trust, therefore, that your Lordship will press the suggestion of a personal conference on your Ministers as preferable to a further interchange of Despatches.

I have, &c.

RIPON.

No. 92.

THE SOCIETY OF AUTHORS to COLONIAL OFFICE.

(Received March 21, 1895.)

[Answered by No. 103.]

4, Portugal Street, Lincoln's Inn Fields, W.C.,

March 20, 1895.

MY LORD,

I HAVE much pleasure in forwarding to you, for your consideration, the petition of authors, publishers, and all those interested in copyright in the United Kingdom against the Canadian Copyright Act. All the signatures have been copied on to the main roll, but the separate copies of the petition with the original signatures are attached in the packets forwarded herewith, and correspond to the letters or numbers on the main roll.

I am, &c.

G. HERBERT THRING,

Secretary of the Incorporated  
Society of Authors.

Enclosure in No. 92.

To the Most Honourable the MARQUESS of RIPON, K.G., G.C.S.I., Her Majesty's  
Secretary of State for the Colonies.

THE HUMBLE PETITION of the undersigned Authors, Artists, Publishers, and Copyright  
Owners of Great Britain and Ireland.

Sheweth:

That a Bill entitled "An Act to amend the Copyright Act," chap. 62 of the Revised Statutes, passed through both Houses of Parliament of the Dominion of Canada, and now awaiting the assent of Her Majesty, is subversive of the principle which has hitherto governed copyright legislation in this country and on the Continent of Europe, is calculated to destroy the international arrangement known as the Berne Convention, and is likely to provoke retaliatory legislation by the Government of the United States.

And that the provision of the above-mentioned Act, whereby any Canadian publisher may republish the work of any British author, without his consent, which has fallen into the public domain in any form and at any time, on the sole condition of paying such author a royalty of 10 per centum on the published price of such work is unjust and impracticable. Further, that it is a retrograde step, inasmuch as the rights of authors are now, after long struggle, obtaining increased recognition throughout the civilized world.

Also that the provision whereby a period of one month only after first publication is allowed during which a British author may become entitled to exclusive copyright within the Dominion of Canada is insufficient.

We therefore humbly request that Her Majesty may be advised to withhold her assent from the Bill in its present form.

And your petitioners will ever pray, &c.

No. 93.

CANADIAN COPYRIGHT ASSOCIATION to COLONIAL OFFICE.

(Received March 22, 1895.)

(TELEGRAPHIC.)

[Receipt acknowledged by No. 95.]

Official statement Canadian Copyright mailed to-day; contains convincing argument our favour; see my letter London "Times" to-day.—LANCEFIELD.

No. 94.

THE COPYRIGHT ASSOCIATION OF CANADA to COLONIAL OFFICE.

(Received April 4, 1895.)

The Copyright Association of Canada,  
Hon. Secretary's Office, Hamilton,

March 22, 1895.

MY LORD,

I AM asked to transmit to you a copy of a circular giving an official statement of many of the points covered in the copyright discussion, from the Canadian point of view.

I also take the liberty of adding some other literature\* bearing on the question, in order that you may see as much as possible of our side of the case.

I have also to add that some of the newspapers of England agree with us that Canada must have the right to pass and enact its own law. Thus, a friend of mine sends me a copy of the Norwich "Eastern Daily Press" of 28th February 1895, which has an editorial article commencing, "The protest of British authors against the new Canadian copyright is not likely to have the smallest effect," and ending with the statement, "But we fear that the evil from the point of view of the Incorporated Society of Authors is irremediable."

Apologising for troubling your Lordship,

I have, &c.

RICHARD T. LANCEFIELD,  
Hon. Secretary.

Enclosure in No. 94.

The Copyright Association of Canada, Toronto,  
March 20, 1895.

CERTAIN erroneous statements having been circulated with regard to the Canadian Copyright Act of 1889, it has been deemed advisable by the Copyright Association of Canada to issue the following statements:—

The Canadian Copyright Act of 1889 was unanimously passed by the Parliament of Canada, and assented to by the Governor-General.

The Act was to come into operation on proclamation of the Governor-General.

The Governor-General has not yet proclaimed the Act.

The Canadian Government contend that they have the right to legislate fully on copyright, it being one of the classes of subjects entrusted to the Parliament of Canada by the B.N.A. Act of 1867.

The following are among the reasons why the Act should be proclaimed:—

A copyright is analogous to a patent. The Canadian Copyright Act is analogous to the Canadian Patent Act. That Patent Act requires manufacture in Canada. The Imperial Government did not disallow the Patent Act. The Imperial Government would not propose that a United States patentee, on securing the British patent, should thereby secure the Canadian patent. Why should the Imperial Government assure the United States author that on securing copyright in Great Britain he thereby secures copyright in Canada? Canada exclusively legislates as to the terms on which patents may be secured in Canada. Canada should be permitted to exercise the same powers as to the terms on which copyrights may be secured in Canada.

The United States publisher, when buying from a British author the copyright for the United States, stipulates that Canada shall be included.

Canadians resent this sale of their market, and persist in their claim to adopt such legislation as will put a stop thereto.

General statement.

A copyright analogous to a patent.

Canadian market must not be sold.

Canadian reprints cannot flood other markets.

The fear that Canadian publishers would flood the British and United States markets with cheap editions is utterly unfounded, as the Copyright Acts of those countries prohibit the importation and sale of unauthorised editions, and impose a heavy penalty for violation of the law. Canadian publishers, therefore, could not flood either market with cheap editions.

It has happened that orders for books sent to London have been returned with "cannot supply" marked thereon, thus forcing Canadians to buy those books from the United States publishers.

On the other hand, the British publisher prints a cheap edition of a work by a United States author. This cheap edition is exported to Canada. An illustration on this point is furnished in the case of F. Marion Crawford's book, "The Ralstons." This book was published in the United States at \$2. It was published simultaneously in Great Britain at 12s. But the British publishers printed a cheap Colonial edition which sold in Canada for 75 cents. This cheap edition was on sale in Canada within a day or two after the publication of the United States \$2 edition. Here, then, is a British publisher issuing a cheap paper edition for sale in Canada—when one of the main objections of the opponents of the Canadian Act, which is made to do duty on every occasion, is that the Canadian publisher will issue cheap paper editions which will flood the United States market, in competition with the more expensive United States editions! It must be distinctly understood, however, that this cheap paper edition, which is sold in Canada, does *not* flood the United States market, for the very excellent reason, already stated, that the United States Copyright Act prohibits its importation or sale in the United States.

Imports allowed from Britain.

The Canadian Act permits the importation of British editions of works, whether copyrighted here or published under the royalty clause of the Act; but excludes foreign editions.

No piracy in Canadian Act.

Should the author (be he British or American) neglect to secure copyright in Great Britain, any publisher may reprint the work there without paying the author.

Should the author neglect to secure copyright in the United States, any publisher may reprint the work there without paying the author.

Should the author neglect to secure copyright in Canada, no Canadian publisher could reprint the work in Canada without paying the author 10 per cent. royalty.

It is therefore clearly seen that, while the British and United States Acts permit the piracy of authors' works, the Canadian Act does not.

The Royalty clause.

The introduction of the royalty clause in the Canadian Act was not original with the promoters thereof. The idea was suggested by the Foreign Reprints Act, passed by the Imperial Parliament, which allows a United States publisher, or other foreign publisher, who has printed a copyright book without permission, to supply the Canadian market on payment of a royalty of 12½ per cent., collected on the whole-sale price of the book, which royalty goes to the British copyright owner. It was but natural for the Canadian to desire to be placed on an equal footing with the foreign publisher, so far as his own market was concerned. Therefore a royalty of 10 per cent. on the retail price of the book was suggested.

Furthermore, many difficulties have been encountered in collecting the royalty on imports, it being almost impossible to keep a complete and accurate list at every Custom House, and to check every invoice therefrom. The collection of the royalty on reprints, on the other hand, is provided for by the Canadian law in a perfectly safe manner, as the Inland Revenue Department is to stamp the title page of each copy of every book issued, and before this is done the royalty must be paid to the Government to the credit of the author. As a matter of fact, then, the author will exchange his royalty of 12½ per cent. on imports, which is uncertain of collection, for a royalty on reprints of 10 per cent. on the retail price, which is certain of collection.

Geographical position.

In considering this question, the geographical position of Canada, side by side with the United States, ought not to be overlooked. This fact makes Canada's position very different indeed from that of any other British Colony.

Advantages given to authors.

Compare the United States Copyright Act, now in operation, with the Canadian Copyright Act, and it will be seen that many advantages are given to authors by the latter.

To secure copyright in the United States, the British author must print his book there from type set within the limits of the United States, or from plates made from type set within the limits of the United States. The Canadian Act provides for no such restriction, but allows both British and United States authors to set the type in Canada, or print from plates, as they may think best. In anticipation of the Canadian Act

coming into force, the Canadian Government passed a special enactment allowing plates for books to be imported into Canada free of duty. The concession was made thinking that it would be appreciated, but those opposing the Act seem determined to ignore the concession. Yet the concession is there, and it proves that Canada grants British authors copyright in Canada on far more liberal terms than they can secure copyright in the United States, and that Canada grants United States authors copyright in Canada on far easier terms than Canadians are granted copyright in the United States.

Canada has not only lost the printing of works by foreign authors, but is fast losing the printing of works by Canadian authors, not because the books can be printed cheaper or better abroad, but because they have to be manufactured in the United States in order to secure copyright there. When that is done there is no necessity for issuing a Canadian edition, as the Canadian market can be supplied by the United States edition.

Injustice to important Canadian interests.

Under the present law the Canadian reading public are ignored, and the works of both British and United States authors must be imported into Canada, and, moreover, these editions are, in many cases, published at such prices as to put them beyond the reach of the great majority of Canadian readers.

Reading public inconvenienced.

British authors are now able to secure copyright in the United States, and United States authors are now able to secure copyright in Great Britain (which covers Canada). Therefore the copyright owners now refuse to print in Canada. They supply this market with editions printed either in the United States or Great Britain. This is considered a great injury to the printing, paper, and allied industries in Canada. It is, moreover, a source of trouble and annoyance to the people of Canada, as the British market is so far away, that after the supply on hand of a book is exhausted some weeks must elapse before a new supply can be procured.

A circular, containing objections to the Canadian Act, has been recently issued in England. These objections should not prevail.

Objections refuted.

The circular states that Canada has asked the British Government to sanction arrangements to take copyright in Canada away from all British authors except such as are Canadians. Such is not the case. Canada does not propose to take away copyright in Canada from British authors. The British author and the United States author may, under the Canadian Act, secure copyright in Canada on exactly the same terms as the Canadian author.

It is objected that the Canadian Act will injure the value of the British edition, because the Canadian edition could be imported into the United Kingdom and the other Colonies, and compete with it. But from the report of Lord Knutsford's Copyright Commission of 1892, it appears that, at the instance of the British copyright owners, the law of Great Britain was framed so that the importation of Canadian reprints of British works into Great Britain is prohibited.

It is objected that the Canadian Act is at variance with the Free Trade principles of the United Kingdom. That may be. The Canadian Tariff Act is also avowedly at variance with the Free Trade principles of the United Kingdom, yet the British Government would not propose to interfere with it.

It is objected that the Canadian Act will destroy the British author's present means of securing copyright in the United States of America. That is only an opinion. Are not the British publishers themselves alone responsible for the agitation against allowing British authors to hold copyright in the United States? The action of the British Music Publishers' Association in contesting what is known as the "manufacturing" clause in the United States Act has done British authors incalculable harm in the United States; and if the British music publishers will not accept that manufacturing clause (as British book publishers have very wisely done), British authors may yet find themselves deprived of the benefit of copyright in the United States.

As to the Berne Convention, it should be understood that the Canadian Parliament never adopted or agreed to the Berne Convention. On the contrary, the Canadian Parliament has twice asked that notice be given of Canada's desire that the Convention be denounced.

Most of the other objections are based on the supposition that the author loses control over his work under the Canadian Act. Nothing could be further from the fact, since, by complying with the terms of the Act, authors and copyright owners retain entire control of their works, and may suppress old editions, or issue new ones as desired.

Canadians insist on the full right of the Parliament of Canada to pass and enact legislation on copyright as desired from time to time; the same as they enjoy on the other subjects entrusted to that Parliament under the B.N.A. Act of 1867.

Canadians stand by the Act of 1867.

The right of the Parliament of Canada to enact and enforce its own copyright legislation has been endorsed by the unanimous vote of the Parliament and Senate of Canada ; by the newspaper press of Canada ; by the Board of Trade of the City of Toronto, and other cities ; by the employing printers of Canada ; by the typographical unions and printing pressmen's unions ; by the trades and labour councils (comprising representatives from the various trades) ; by the Booksellers' and Paper Makers' Association, and by many others.

The above reasons, amongst others, for the enforcement of the Copyright Act of 1889, were laid before Sir Mackenzie Bowell, the Premier of the Dominion of Canada, and Sir Charles Hibbert Tupper, the Minister of Justice, by an influential deputation of the Copyright Association of Canada, at Toronto, in February 1895.

Signed on behalf of the Copyright Association of Canada,

J. ROSS ROBERTSON, President.  
DAN A. ROSE, Vice-President.  
RICHARD T. LANCEFIELD, Hon. Secretary.

No. 95.

THE MARQUESS OF RIPON to the EARL OF ABERDEEN.

MY LORD,

Downing Street, April 8, 1895.

I HAVE the honour to request that you will inform Mr. R. T. Lancefield, hon. secretary-treasurer of the Copyright Association of Canada, that I have received his telegram of the 22nd ultimo and his letter of the same date\* on the copyright question.

I have, &c.  
RIPON.

No. 96.

THE EARL OF ABERDEEN to the MARQUESS OF RIPON.

(Received April 9, 1895.)

[Answered by No. 101.]

MY LORD,

Government House, Ottawa, March 27, 1895.

WITH reference to your Lordship's Despatch of the 4th August last† relative to the desire of the Trustees of the British Museum to have copies of books to which copyright privileges are granted in Canada deposited in the Museum, I have the honour to enclose herewith copy of an approved Minute of the Privy Council, from which your Lordship will observe that it is the intention of Ministers to recommend to Parliament such an amendment of the present Copyright Act as shall meet the wishes expressed by the Trustees.

I have, &c.  
ABERDEEN.

Enclosure in No. 96.

EXTRACT FROM A REPORT OF THE COMMITTEE OF THE HONOURABLE THE PRIVY COUNCIL,  
approved by His Excellency on the 25th March 1895.

THE committee of the Privy Council have had under consideration a Despatch, hereto attached, dated 4th August 1894, from the Marquess of Ripon, covering an application of the Trustees of the British Museum to be supplied with copies of Canadian copyright books.

The sub-committee of Council, to whom the matter was referred, state that under the Canadian Copyright Act (R.S.C., chapter 62), two copies of all books, maps, &c., upon which a copyright is sought, have to be deposited with the Department of Agriculture, one copy being kept in the Department of Agriculture, as of record, and the other copy deposited in the Library of Parliament, and if a copy is also to be supplied to the British Museum, the Copyright Act will have to be changed so as to make the deposit of three copies necessary.

\* Nos. 93 and 94.

† No. 77.

The sub-committee observe that in England five copies of copyright book, &c. may have to be supplied, as, under the English Copyright Act, one copy of each copyright book, map, &c. is deposited in the British Museum, and, upon demand being made, copies have also to be supplied to the libraries of the Universities of Oxford, Cambridge, Trinity College, Dublin, and the Advocate's Library at Edinburgh.

It would not, therefore, seem to be too burdensome to ask applicants for copyright to supply three copies of the books, &c. for which copyright is sought instead of two as at present, while the deposit of Canadian books, &c. in the library of the British Museum would be the means of introducing the works of Canadian authors to the large and influential class of readers who frequent the library.

The sub-committee, under these circumstances, are of opinion that the advantage to Canadian authors, and to Canadian literature, of having Canadian books deposited in the library of the British Museum would more than counterbalance any extra cost that the deposit of three books instead of two books, as at present, would entail upon those applying for copyright, and therefore recommend that the Canadian Parliament be asked to amend the Copyright Act in the direction above indicated.

The committee advise that your Excellency be moved to forward a certified copy of this Minute, if approved, to the Right Honourable the Secretary of State for the Colonies.

All which is respectfully submitted for your Excellency's approval.

JOHN J. MCGEE,

Clerk of the Privy Council.

No. 97.

COLONIAL OFFICE to FOREIGN OFFICE.

[Answered by No. 100.]

EXTRACT.

Downing Street, April 9, 1895.

WITH reference to previous correspondence respecting the question of copyright in Canada, I am directed by the Marquess of Ripon to transmit to you, to be laid before the Earl of Kimberley, a copy of a letter,\* from the Incorporated Society of Authors enclosing a copy of a petition from certain authors, publishers, and others, praying for the disallowance of the Canadian Copyright Act of 1889,† together with draft of the reply,‡ which his Lordship proposes, if Lord Kimberley sees no objection, to return to the letter.

No. 98.

COLONIAL OFFICE to BOARD OF TRADE.

[Answered by No. 102.]

SIR,

Downing Street, April 9, 1895.

WITH reference to previous correspondence respecting the question of copyright in Canada, I am directed by the Marquess of Ripon to transmit to you, to be laid before the Board of Trade, a copy of a letter\* from the Incorporated Society of Authors enclosing a copy of a petition from certain authors, publishers, and others, praying for the disallowance of the Canadian Copyright Act of 1889,† together with draft of the reply‡ which his Lordship proposes, if the Board of Trade see no objection, to return to the letter.

I am, &c.

EDWARD WINGFIELD.

No. 99.

COLONIAL OFFICE to BRITISH MUSEUM.

SIR,

Downing Street, April 18, 1895.

WITH reference to your letter of the 18th of July last,‡ I am directed by the Marquess of Ripon to inform you that a Despatch has been received from the Governor General of Canada reporting that his Ministers intend to recommend to the Canadian Parliament such an amendment of the present Copyright Act as shall meet the wish expressed by the Trustees of the British Museum to have copies of those books to which copyright privileges are granted in Canada deposited in the Museum.

I am, &c.

JOHN BRAMSTON.

No. 100.

FOREIGN OFFICE to COLONIAL OFFICE.  
(Received April 19, 1895.)

EXTRACT.

Foreign Office, April 19, 1895.

I AM directed by the Earl of Kimberley to acknowledge the receipt of your letter of the 9th instant,\* enclosing a letter from the Incorporated Society of Authors, covering a petition praying for the disallowance of the Canadian Copyright Act of 1889, together with the draft of the reply which it is proposed to return thereto, in the terms of which Lord Kimberley concurs.

No. 101.

## THE MARQUESS OF RIPON to the EARL OF ABERDEEN.

MY LORD,

Downing Street, April 20, 1895.

I HAVE the honour to acknowledge the receipt of your Despatch of the 27th ultimo,† enclosing copy of an approved Minute of the Privy Council, from which I learn that your Ministers are prepared to recommend to the Dominion Parliament such an amendment of the present Copyright Act as will meet the desire expressed by the Trustees of the British Museum to have deposited in the Museum copies of books to which copyright privileges are granted in Canada.

I have to request that you will convey to your Ministers an expression of my thanks for their ready compliance with my wishes in this matter.

I have, &amp;c.

RIPON.

No. 102.

BOARD OF TRADE to COLONIAL OFFICE.  
(Received April 23, 1895.)Board of Trade (Railway Department),  
7, Whitehall Gardens, London, S.W.

April 22, 1895.

SIR,

I AM directed by the Board of Trade to advert to your letter of the 9th instant,‡ transmitting copy of a letter from the Incorporated Society of Authors, enclosing copy of a petition from certain authors, publishers, and others, praying for the disallowance of the Canadian Copyright Act of 1889, together with a draft of the reply which the Secretary of State proposes to return to the letter in question.

In reply, I am to acquaint you, for the information of Lord Ripon, that the Board of Trade concur in the terms of the proposed answer to the Incorporated Society of Authors.

The draft reply is returned herewith.

I have, &amp;c.

FRANCIS J. S. HOPWOOD.

No. 103.

## COLONIAL OFFICE to the SOCIETY OF AUTHORS.

SIR,

Downing Street, May 11, 1895.

I AM directed by the Marquess of Ripon to acknowledge the receipt of your letter of the 20th March,§ forwarding a Petition from various authors, publishers, and others against the Canadian Copyright Act.

His Lordship will cause this Petition to be forwarded to the Dominion Government, who will, no doubt, give to the views expressed in it the consideration to which the names subscribed entitle it.

I am to observe, however, that the views expressed in the Petition go much further than those set forth in the previous letters on the subject to this Department from the Society of Authors, dated the 3rd of November 1890 and the 9th of December 1892.||

\* No. 97.

§ No. 92.

† No. 96.

|| Nos. 18 and 35.

‡ No. 98.



The former communications, while criticising some details of the licensing provisions of the Act, which the Petition characterises as "unjust and impracticable," appeared to Her Majesty's Government to justify the conclusion that the Society of Authors did not entertain any insuperable objection to a system of licensed re-printing.

With regard to the Berne Convention, I am to observe that that instrument reserved the power of announcing at any time the separate denunciation of the Convention by Canada.

I am, &c.

JOHN BRAMSTON.

No. 104.

COLONIAL OFFICE to FOREIGN OFFICE and BOARD OF TRADE.

SIR,

Downing Street, May 16, 1895.

WITH reference to your letter of the 19th 22nd ultimo,\* respecting the petition of the Society of Authors and others on the subject of Canadian Copyright, I am directed by the Marquess of Ripon to transmit to you, for the information of the Earl of Kimberley, Board of Trade, a copy of the reply† which has been returned to the petition.

I am, &c.

EDWARD WINGFIELD.

No. 104A.

THE MARQUESS OF RIPON to the EARL OF ABERDEEN.

MY LORD,

Downing Street, May 18, 1895.

I HAVE the honour to transmit to you, for communication to your Ministers, a copy of a Petition‡ from various authors and others interested in the question of copyright on the subject of the Canadian Copyright Act of 1889.

I have informed the Society of Authors that their Petition has been referred to your Ministers, who will, no doubt, give it the consideration to which the influential names appended entitle it.

I have, &c.

RIPON.

No. 105.

THE SOCIETY OF AUTHORS to COLONIAL OFFICE.

(Received May 24, 1895.)

[Answered by No. 110.]

4, Portugal Street, Lincoln's Inn Fields, W.C.,

May 23rd, 1895.

SIR,

I BEG to acknowledge the receipt of your letter of the 11th instant,† which was brought under the attention of the Managing Committee of the Society of Authors at their last meeting. With respect to your reference to former communications from the former Chairman, Sir Frederick Pollock, regarding Canadian Copyright, I am directed to point out that it is only recently that the attention of British authors has been seriously directed to this question and that anything like a strong consensus of opinion has been formed about it.

\* Nos. 100 and 102.

† No. 103.

‡ Enclosure in No. 92.

It is unquestionable that all British authors of any standing whatever prefer that copyright should, as far as possible, remain an Imperial matter, and that one system of legislation should control it throughout the British Empire at least and ultimately, if it were possible, throughout the English-speaking world. They view with alarm any tendency to multiply varieties of copyright legislation in different centres as likely in the highest degree to militate against their interests.

All Colonial Governments have proved their incapacity to collect any material fraction of duties or imported reprints. The Committee beg to call your attention to Section 193 of the Report of the Copyright Commission of 1878 as an instance of this. The figures there quoted are, unfortunately, not very recent, but the Society is endeavouring to get them, as far as possible, brought up to date, and thus far finds no record of any more encouraging returns. British authors, therefore, cannot but view with distrust any proposal involving the collection of their royalties by similar machinery. A member of the Committee himself saw at Hongkong hundreds of pirated reprints of Mrs. Humphrey Ward's novels publicly offered for sale, and authors have had to suffer similar injustice in many other parts of the British Empire. They further lay great stress upon the injurious effect likely to be produced in the United States by legislation of the kind proposed by Canada.

I am directed to forward, for your consideration, the accompanying documents:—

1. The Society's last memorandum upon the whole question.
2. Section 193 of the Report of the Copyright Commission of 1878.
3. Copies of letters from Mr. J. G. Ridout, of Toronto, dated respectively April 1895, and May 2nd, 1895.

I have, &c.

G. HERBERT THRING,  
Secretary, Society of Authors (Incorporated).

Enclosure 1 in No. 105.

#### CANADIAN COPYRIGHT.

It is impossible to deal with the Canadian Copyright Act of 1889, or to estimate the effect it will produce if it is allowed to come into force, without in the first place shortly referring to the present position of Copyright, (*a.*) as an International, (*b.*) as an Imperial question.

#### I.—*International Copyright.*

(1.) The principal countries of Europe and, in fact, from a literary point of view, the principal countries of the world, with the exception of the United States, have at last, in the Berne Convention, recognised that the rights of an author in the fruit of his labour should be free from all conditions and restrictions whatsoever, except such as may be enforced by the laws of the country where it is first produced.

(2.) The United States of America, unfortunately, owing to political and trade pressure, have not been able to allow authors their full and just rights. Foreign authors can, however, under the Act of 1891, now obtain protection on the terms of printing their works in the States. The condition is unquestionably wrong and unfair in principle, but the recognition by the States of the rights of foreign authors is, even when subject to such a condition, of immense importance, especially to British authors.

Acceptance of the terms imposed does not imply a recognition of their justice and should not under any circumstances be allowed to be drawn into a precedent. On the other hand, we should be most careful to avoid doing anything which might imperil the recognition of the right of British authors which has been so hardly won from the United States of America. The Canadian Act if allowed to come into operation would, it is believed, lead to the withdrawal from British authors of the United States Act of 1891.

#### II.—*Imperial Copyright.*

The foundation of Imperial Copyright as it at present exists is to be found in the Act of 1842, which gives protection throughout the British dominions to every work which is first published in the United Kingdom.

The Colonies justly complained that under this Act a work which was published in a Colony had no copyright in the United Kingdom, or in any other Colony, but this grievance has been removed by the Act of 1886; a work published in a Colony now enjoys precisely the same protection as one first published in the United Kingdom.

### III.—*Canadian Copyright as it exists at present.*

It was a common complaint of the Colonies, especially of Canada, that, owing to the operation of the Imperial Copyright Act, they were unable to obtain a sufficient supply of English literature. In order to remove this ground of complaint the Foreign Reprints Act was passed, and under its provisions Canada has been allowed to import pirated copies of English works on the undertaking that a duty of 12½ per cent. should be collected by the Colony upon all such copies for the benefit of the author.

As a matter of fact, the duty has not been collected, nor has any serious attempt been made by Canada to comply with the undertaking.

In 1875 an Act was passed in Canada giving Copyright to foreign authors upon conditions of their re-publishing in the Colony, either simultaneously with, or at any time after, publication elsewhere. This Canadian Act was expressly authorised by an Act of the Imperial Legislature, and therefore the Canada printers and publishers contended that the Imperial Copyright Act was repealed so far as Canada was concerned, and that English authors could only obtain Copyright in Canada upon complying with the conditions of the Canadian Act.

This contention was, however, decisively negatived by the Canadian Courts, in the case of *Smiles v. Belford*, and the position therefore at present is that English authors are only obliged to republish in Canada if they wish to avoid the operation of the Foreign Reprints Act.

### IV.—*Canada's present Proposals.*

The Canadian Copyright Act passed by Colonial legislature in 1889, but reserved for the sanction of the Imperial Government, provides that in order to obtain Copyright in Canada works must be registered with the Minister of Agriculture before or simultaneously with their first publication, wherever such publication takes place, and must be reprinted and republished in Canada within one month of their publication elsewhere, and (2) that if the author does not comply with these conditions, the Minister may grant licenses for the publication of the work, the licensee paying a royalty of 10 per cent. for the benefit of the author. This Act is promoted solely by, and in the interests of, the Canadian printers and publishers, who claim to have the right to make a profit out of the works of English authors.

The following are some of the reasons why the Act should not come into force:

1. It is reactionary and contrary to the principle adopted by this country, after full consideration, in consenting to the Berne Convention. It would of course deprive the Canadian author of the benefit of that Convention.

2. It is an attempt to deprive authors of their recognized rights for the benefit of the Canadian printers and publishers.

3. It is (except from the view of the printer and publisher) entirely unnecessary. The Canadian reader is amply provided for under the Foreign Reprints Act.

4. It will involve the repeal, so far as British authors are concerned, of the United States Copyright Act, 1891, and the revival of legalised piracy in that country.

5. If it should by any chance accomplish its object, the actions of the Canadians will thus recoil on their own heads. Canada will again be flooded by pirated copies printed in the United States, and the last condition of the Canadian printers and publishers will be far worse than the first. The shortsightedness of the Canadian policy is almost incredible. It will involve the flooding of English and other markets with cheap reprints, to the great detriment of publishers who have to pay a fair price for the works they publish. It has been proved over and over again that legislation is powerless to prevent the importation of these cheap reprints.

6. Having regard to the entire failure of Canada to collect the duties under the Foreign Reprints Act, there is no security whatever that authors will receive even the 10 per cent. royalty provided by the Act.

A manifesto has been issued by the Canadian Copyright Association in support of the Act. The reasons given may be stated as follows :—

1. Canada has the right to legislate fully on Copyright—

Canada's right to legislate on Copyright is confined to the case of Canadian authors. She has no right whatever to take away from British authors their rights under the Imperial Acts. This was expressly decided by her own Courts in *Smiles v. Belford* and is the reason why she is now seeking the advice of the Imperial Legislature.

2. Copyright is analogous to patent right, and the Imperial Government did not disallow the Canadian Patent Act.

But, in the first place, copyright is *not* analogous to patent right. Copyright is given to the form only, not to the thought expressed. It does not prevent authors dealing with the same subject or idea. Patent right deprives the second inventor who has independently arrived at the same result of the profit of his labours. Patent right is a monopoly in restraint of other original inventions: Copyright is not. Secondly, the Canadian Copyright Act is not in the least on the same lines as the Canadian Patent Act. The Patent Act allows 12 months for obtaining a patent in Canada after one has been obtained in England, and a further 12 months for commencing to manufacture. This gives time to ascertain whether the market will warrant the outlay.

3. That under the present conditions the Canadian rights of English authors are included in the sale to United States publishers, to the injury of Canadian printers and publishers.

Here we have the true and only reason for the legislation. It is based on a fallacy. It is no injustice whatever to Canadian printers and publishers that British authors should be able to choose for themselves where and through whom they will print and publish their works. To be consistent, the Canadians should demand that no artists should have protection for their works except such as used paints and canvas made in Canada.

And the remedy is simple. English authors have to reprint in the United States. English publishers do not therefore demand protection or set up imaginary rights, but meet the difficulty in a business-like way. They set up branches in New York and Boston. Let the Canadians do the same. English authors, other things being equal, would rather deal with a Canadian publisher than an American, and let the Canadians join with us in endeavouring to obtain the removal of the unjust restrictions imposed by the United States legislation instead of endeavouring to perpetuate and extend them.

The real interests of British authors and Canadian publishers and printers in this matter are the same, and the latter are pursuing a most shortsighted and suicidal policy.

In any case, the English authors submit with some confidence that the Canadian proposals are not such as ought to receive the sanction or assistance of the Imperial Legislature.

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Enclosure 2 in No. 105.

193. *Failure of Foreign Reprints Act.*—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 10 years ending in 1876, the amount received from the whole of the 19 Colonies which have taken advantage of the Act was only 1,155*l.* 13*s.* 2½*d.*, of which 1,084*l.* 13*s.* 3½*d.* 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.

Enclosure 3 in No. 105.

RIDOUT and MAYBEE, Solicitors of Home and Foreign Patents, Head Office, 103, Bay Street, Toronto, Canada.

DEAR SIR,

Toronto, April 1895.

I HAVE just read your excellent letter in the "Times" bearing on the question of Copyright, and I take the liberty of enclosing you a copy of the "Mail and Empire" of April 6th last, containing, on page 11, a copy of letter written by me on the subject from the authors and artists' standpoint, and from the standpoint of the interests of this country. It is only lately that I have taken this matter up, as I began to fear that this iniquitous Act of 1889 might become law. I trust that no effort will be spared to prevent the mother country from giving assent to this Act, which is far reaching in its evil effects.

I am surprised to find how dense is the ignorance on the matter in this country. Not a lawyer or a politician that I have yet spoken to either understands the matter, or, I believe, has taken the trouble to read the Act. Neither they, nor the authors, know anything about the Berne Convention, nor the rights which are being frittered away to pander to the greed of a few publishers in this country.

The fact is, that the late Sir John Thompson and his Government were held completely by the throat by a few publishers, a part of the press, and some tricky politicians or wire-pullers. The whole issue, in the usual manner of such controversy, is completely ignored by the publishers, and a howl is raised about not permitting Canada to pass Copyright laws of its own, and about flooding our market with American prints of English books. There is no other argument in favour of this Copyright Bill for publishers. A Copyright Act in the interests of printers is somewhat novel.

I propose to see different city members and to write further to the press and try and get up an opposition to the schemes of these publishers during the coming session of the House of Commons here which meets on the 8th of April next.

Yours, &amp;c.

JOHN G. RIDOUT.

W. M. Conway, Esq.,  
4, Portugal Street, Lincoln's Inn Fields,  
London, England.

Enclosure 4 in No. 105.

DEAR SIR,

Toronto, May 2, 1895.

I AM in receipt of yours of the 23rd ultimo, and enclose you a speech of Senator Boulton's made a few days ago in our Senate. I had written to him before his speech and interested him in this matter. Although he is not quite correct in his statement, he is on the right line. I find that those Members of Parliament whom I have spoken to are absolutely ignorant of the whole matter, or the effect of the Copyright Amendment Act of 1889, and apparently take very little interest in it. I have also spoken to some of our leading lawyers and find that they know nothing about this Act of 1889, and that their attention has never been drawn to it. Two out of our three city members with whom I have spoken certainly know nothing whatever about the subject beyond that British authors' works may be printed in America and sent into Canada, which they think a hardship. As for any provisions of the Berne Convention in the interests of Canadian authors and artists, they know nothing about it.

I find on inquiry through a disgruntled member of the Canadian Copyright Association that the total number of members is about 25. It appears that more than one-half of these are not active members, and it may be safely said that there are less than half-a-dozen publishers who are creating the whole disturbance from deputations, from trades' and labour councils, &c. gathered from their own establishments, which we know are very easy to get up. Some of the members of the Canadian Copyright Association are neither printers, publishers, nor binders, and some of the principal firms in this city are either not members at all or inactive members of the Canadian Copyright Association. When it is considered that there are about 346 printing and publishing establishments throughout the Dominion and that there are less than half-a-dozen who are actively engaged in pushing this Act of 1889, the whole thing is really a farce about which the public here are not particularly concerned; but a few publishers have used the cry of Canada first, and the feeling of jealousy which arises from American houses sending British authors' works into Canada, to keep up a sort of spurious excitement.

These few greedy publishers have completely imposed upon the late Sir John Thompson and his Government. Instead of passing the Act of 1889, they should pass an Act to confirm the provisions of the Berne Convention as to Copyright.

Yours, &c.

JOHN G. RIDOUT.

G. Herbert Thring, Esq.,  
Secretary, Society of Authors,  
4, Portugal Street, Lincoln's Inn Fields,  
London, England.

No. 106.

THE LONDON CHAMBER OF COMMERCE to COLONIAL OFFICE.

(Received June 1, 1895.)

CANADIAN COPYRIGHT.

[Answered by No. 108.]

Botolph House, Eastcheap, London, E. C.,

May 31, 1895.

MY LORD,

You will remember the deputation which waited upon you on the 26th of November 1894 from the London Chamber of Commerce, the Society of Authors, the Copyright Association, and the Printsellers' Association, in regard to the above question, at the time when it was being dealt with by the late Sir John Thompson. I understand that the question is now being revived, and that Mr. E. L. Newcombe, Deputy-Minister of Justice of the Dominion, is shortly coming to this country to confer with Her Majesty's Government on this subject. I am instructed by the Committee of this Chamber which is watching the question to apply to your Lordship, which I now do with the approval of the Council of the Chamber, requesting that, before any solution is arrived at by your Lordship, an opportunity may be given to representatives of copyright owners' interests in this country to be present at any conference or discussion on the subject which may take place with Mr. Newcombe.

I am, &c.

KENRIC B. MURRAY,

Secretary.

No. 107.

THE COPYRIGHT ASSOCIATION to COLONIAL OFFICE.

(Received June 6, 1895.)

[Answered by No. 108.]

Aldine House, Belvedere, Kent,

June 5, 1895.

MY LORD MARQUESS,

As the "Times" announces that Mr. E. L. Newcombe, Deputy Minister of Justice at Ottawa, is about to visit England to confer with Her Majesty's Government on the Imperial Law of Copyright as it affects Canada, and as the subject is one of great practical importance to Copyright-owners, and most seriously affects their interests, I write on behalf of the Copyright Association, which is identified with more than half the British copyrights in existence, to ask your Lordship to allow it to be represented, and to take part in the conference when and wherever it may be held.

I have, &c.

F. R. DALDY,

Hon. Secretary.

No. 108.

COLONIAL OFFICE to the LONDON CHAMBER OF COMMERCE  
and the COPYRIGHT ASSOCIATION.

SIR,

Downing Street, June 12, 1895.

IN reply to your letter of the 31st ultimo, I am directed by the Marquess of

Ripon to acquaint you that this Department has received no official intimation of the appointment of Mr. E. L. Newcombe to discuss the question of Canadian copyright with Her Majesty's Government nor of that gentleman's arrival in this country.

I am to add that Her Majesty's Government consider it desirable that any discussions which may be held with a representative of the Dominion Government on this subject should be private, and that it will not, therefore, be possible to admit a representative of the London Chamber of Commerce, but that any (further) representations which that Copyright Association, body may desire to make before a decision is arrived at will receive full consideration.

I am, &c.

JOHN BRAMSTON,

No. 109.

THE EARL OF ABERDEEN to the MARQUESS OF RIPON.

(Received June 19, 1895.)

MY LORD,

Government House, Ottawa, June 5, 1895.

I HAVE the honour to enclose herewith copy of an approved Minute of the Privy Council from which your Lordship will learn that, in accordance with the suggestion contained in your Lordship's Despatch of the 15th March last,\* Ministers have authorized Mr. E. L. Newcombe, Q.C., Deputy Minister of Justice, to proceed to London to discuss the copyright question with Her Majesty's Government.

I have, &c.

ABERDEEN.

Enclosure in No. 109.

EXTRACT from a REPORT of the COMMITTEE of the HONOURABLE THE PRIVY COUNCIL, approved by his Excellency on the 30th May 1895.

The Committee of the Privy Council have had under consideration a Despatch, hereto attached, dated the 15th of March 1895, from the Marquess of Ripon, with regard to the Canadian Copyright Act, which Act, and the correspondence relating thereto, the late Sir John Thompson proposed to discuss with Her Majesty's Government during his last visit to England.

The Ministers of Justice and of Agriculture, to whom the said Despatch was referred, observe that Lord Ripon states that previous communications and correspondence have failed so far to bring about even an approximation of view between Her Majesty's Government and the Government of Canada; that no result appears likely to be gained by further controversial correspondence, and that the only course which seems to offer any prospect of solution is, that, as soon as convenient, one of your Excellency's Ministers, or some other gentleman duly authorized by them, and thoroughly conversant with the subject, should proceed to London and discuss the matter personally with Her Majesty's Government.

The Ministers, in these circumstances, and considering the important interests which are at stake in Canada, and which have been and are suffering by the delay which has already been incurred in arriving at a conclusion of this question, approve of the course suggested; and, inasmuch as it would be impracticable, owing to the present sitting of Parliament and other considerations for one of your Excellency's Ministers to undertake the proposed conference at present, they (the Ministers of Justice and Agriculture) recommend that Mr. Edmund L. Newcombe, Q.C., the Deputy Minister of Justice, be authorized to proceed to London and confer with the representative of Her Majesty's Government upon the subject.

The Committee submit the foregoing for your Excellency's approval, and they advise that your Excellency be moved to forward a certified copy of this minute to the Right Honourable Her Majesty's Principal Secretary of State for the Colonies.

JOHN J. MCGEE,  
Clerk of the Privy Council.

\* No. 91.

No. 110.

COLONIAL OFFICE to the SOCIETY OF AUTHORS.

SIR,

Downing Street, June 20, 1895.

I AM directed by the Marquess of Ripon to acknowledge the receipt of your further letter of the 23rd. ultimo,\* enclosing a memorandum setting forth in detail the objections of the Society of Authors to the Canadian Copyright Act of 1889.

As you are aware, a delegate of the Dominion Government is about to visit this country to discuss this question with Her Majesty's Government, and his Lordship will take care that the objections of your Society receive full consideration.

I am, &amp;c.

EDWARD FAIRFIELD.

No. 111.

THE MARQUESS OF RIPON to the EARL OF ABERDEEN.

MY LORD,

Downing Street, June 20, 1895.

WITH reference to my Despatch of the 18th of May,† I have the honour to transmit to you, for the consideration of your Ministers, copies of further correspondence‡ with the Society of Authors, respecting the Canadian Copyright Act of 1889.

I have, &amp;c.

RIPON.

No. 112.

THE MARQUESS OF RIPON to the EARL OF ABERDEEN.

TELEGRAPHIC.

(Sent June 24, 1895.)

Your Despatch 5 June§; Mr. Newcombe had better not take his passage immediately. Discussion cannot conveniently take place until new Government have completed arrangements. Will telegraph later.

\* No. 105.

† No. 104A.

‡ Nos. 105 and 110.

§ No. 109.

F.B.

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