



Thirty Years of International Copyright

By BRANDER MATTHEWS

ON the first day of July, 1921, it will be exactly thirty years since the act went into effect which first granted the protection of our courts to the writings of authors who were not citizens of the United States. The act was not wholly satisfactory; it has been improved by later legislation; it ought to be still further improved and simplified and strengthened to bring it abreast of the French law; it remains the least adequate now in force of any of the civilized nations; but, improbable as it may be, it marked a long stride in advance and it did what it was meant to do; it put an end to the despoiling of the foreign writer in the United States and of the American writer in foreign countries. In fact, it has accomplished its purpose so completely that the present generation of readers has no knowledge of the conditions which it terminated—conditions which can be familiar only to those of us who have the advantage (or the disadvantage) of being at least fifty years old, those of us, that is to say, who had almost attained to man's estate when the International Copyright act became effective.

What were these conditions? How did they come about? And how were they terminated? These three questions need to be considered separately.

Before July 1, 1891, a book published in London or Paris could be reprinted by anybody or by any number of bodies in New York without the permission of the British or French author and without any payment to him. The novels of Scott and Dickens, Thackeray and George Eliot, Hugo and Dumas, the essays of Macaulay and Taine, the scientific writings of Spencer and Huxley and Tyndall, the poems of Tennyson and Browning, passed out of the control of their authors as soon as they were put on sale in Europe. And the novels and lyrics of American writers were almost—although not quite—as unprotected in England. Hundreds of thousands of copies of "Uncle Tom's Cabin" were sold in Great Britain, for which Mrs. Stowe did not receive a penny. Thousands of copies of Longfellow's poems were issued by English publishers; and I heard Lowell say once that all the reward Longfellow had reaped from them was the gift of a game pie, sent to him across the Atlantic by a kind-hearted and appreciative London publisher.

As there were many British authors and only a few American, the outcry which arose from the authors

of Great Britain was more frequent and far shriller than that which arose from the authors of the United States. British periodicals denounced American publishers as a band of pirates; and the editors of these periodicals were surprised and annoyed when it was pointed out to them that there were also British publishers glad to turn a dishonest penny. What made the situation more humorous was that the French authors were as vociferous in protesting against their maltreatment in Great Britain as the British authors were in their objection to American piracy. Charles Reade, for example, who was an ardent advocate of a copyright treaty between England and America, took most of the plot of his "Hard Cash" from the "Pauvres de Paris," a play by Brisebarre and Nus; and he made no acknowledgment of this raid on a French piece, nor did he make any payment for it—as Nus told me sadly in Paris nearly fifty years ago. W. S. Gilbert writhed in pain when "H. M. S. Pinafore" was performed simultaneously without his permission at half a dozen playhouses in New York; but he did not hesitate to boast of the hundreds of pounds he had made by the "Wedding March," his hasty adaptation of the "Chapeau de Paille d'Italie" of Labiche, to whom he did not offer any share of his abundant royalties.

When you seek equity, so the old legal maxim declares, you must come into court with clean hands. In the eyes of the French the hands of the British were not clean, even if they were cleaner than our hands were in the eyes of the British. It is true that there were comparatively few London publishers who levied on American authors, even if this may have been because there were comparatively few American authors whose works were attractive to readers in the British Empire; and it is true therefore that the British authors suffered far more abundantly than the American authors. Dickens made himself unpopular on his first visit to America by denouncing the pirates who had despoiled him. Thackeray could have left a comfortable fortune to his two daughters if he had received from America the copyright royalties that were his due.

But, when all is said, it is obvious that the plight of the American writer was really more unfortunate than that of the British writer. Even if Scott did not get what he ought to have got from those who printed his books on this side of the Western Ocean, he had his home market, whereas Cooper had to sell

his wares in his home market the prices in which were demoralized by cheap and ugly and flimsy editions of Scott and Bulwer Lytton and G. P. R. James. In other words, the American authors had to vend their wares in unfair competition with stolen goods. Under these circumstances it is a matter of wonder that American literature was able to make any headway at all.

There is no need to dwell on the disadvantage to any nation of having to depend on another nation for its literature. As we are what we eat, so we are what we read. "Society is a strong solution of books," so Dr. Holmes once declared; "it draws the virtue out of what is best worth reading as hot water draws the strength of tea leaves."

This brings me to the second question: How had this condition come about? It could not have come about because we Americans were more dishonest than the British, or because our kin across the ocean were more dishonest than their neighbors across the Channel. It came about because we on our part and the British on theirs had been slower than the French to recognize the advantage of giving to the author of a book all the rights to which he is entitled—because copyright itself, national as well as international, is a creation of law which develops slowly and only in response to an awakened conscience. It is the individual sense of wrong which stimulates the moral growth of society. An individual who feels that he is injured asserts a right, which is admitted by society only after society is convinced that there has been an injury; and sooner or later the pressure of public opinion causes a crystallization of ethics into law.

Now, it was only after the invention of printing that authors could suffer any material injury by the multiplication of copies of their books without payment for them. So it was not long after Gutenberg that the Republic of Venice passed a special act protecting one of its citizens in the ownership of his edition of a classic author. This protection was a special privilege to one man for one book; and it could not extend beyond the boundaries of Venetian territory. But it was a beginning; and slowly, very slowly, indeed, general laws were enacted protecting all the books of every author in the country of which he was a citizen. In the eighteenth century, when Germany was only a geographical expression, the Diet had to pass a special act to protect (in all the loosely united German States) a

complete edition of Goethe's works. In the eighteenth century, again, before the union of Ireland with Great Britain, the English authors suffered severely from Irish pirates; and in the early nineteenth century the French authors were at the mercy of Belgian reprinters.

It took long years to get copyright firmly established in any one nation; and it was several centuries before there was any adequate recognition of the right of aliens to control their writings outside their own countries. In fact, it was centuries before aliens were allowed to have any rights. Once upon a time if a ship was wrecked on the coast of France it was seized by the feudal lord; and in England it belonged to the King, and this claim of the Crown to all the property of the owner of the wreck was put forward as late as 1771, when Lord Mansfield decided against it. So we can see that the copyright relations of the United States and Great Britain prior to 1891 were substantially the same as those between Belgium and France in the first third of the nineteenth century and as those of Ireland and England at the end of the eighteenth. What had brought about the condition was that we had lagged behind the other nations. They had seen the wisdom and the justice and the expediency of recognizing the right of alien authors; and we had not. We were not so much morally delinquent as we were intellectually laggard. We had not kept abreast of the advance of civilization.

This brings us to the third and final question: How was an end put to the intolerable situation? From Henry Clay's time there had been incessant agitation. Almost every American man of letters was on record as an advocate of international copyright. About forty years ago the many disadvantages of book piracy were made acutely manifest by a series of unexpected developments in the publishing business; and the leading publishers were as much dissatisfied with the state of affairs as were the authors. The time was ripe for another effort, more carefully organized than any of its predecessors.

So it was that in 1883 a group of American writers founded the American Copyright League. I have always been proud that this organization came into existence as the result of a meeting held at my house. We felt certain that the American people would wish to right a wrong if only the facts were made plain; so we planned a long campaign, and

we began at once to arouse public interest. We raised money by authors' readings; we held meetings; we made speeches; we enlisted the aid of the clergy and persuaded them to preach sermons; we wrote copiously in every periodical to which we could gain access; we elected James Russell Lowell as President of the league; and we took as our motto a quatrain he had written for us:

In vain we call old notions fudge,
And bending our conscience to our dealing;
The ten commandments will not budge,
And stealing will continue stealing.

The American Copyright League was an association of authors; and the publishers soon organized a league of their own, the two leagues working together loyally. A copyright bill was drawn and introduced in Congress; it was debated frequently—and the debates were reported, helping to bring the subject again and again to public attention. Hearings were held before the Committee on Patents, to which the bill had been referred. We multiplied our articles and our pamphlets, our meetings and our speeches. We enlisted the aid of newspapers throughout the United States. We were on the verge of success more than once, only to fail at the last moment, as other good causes have failed. Then after eight years of strenuous effort, the bill became an act; and on July 1, 1891, it went into effect. It was not altogether satisfactory; it was a makeshift and a compromise; but it achieved its purpose adequately. It put a stop to book piracy on both sides of the Atlantic. Thereafter American writers no longer had to sell their wares in an unfair competition with stolen goods. No longer did the premium of cheapness force British books into an undeserved circulation in the United States. British books in America and American books in England sold on their merits on both sides of the ocean; and while the authors of both countries profited by this recognition of their rights, the peoples of both countries profited even more.

None the less the law is not yet what it ought to be; and the Register of Copyrights, Thorvald Solberg, is not overstating the case when he said in his last annual report to the Librarian of Congress, that "the present unequal and inadequate exchange of literary property protection * * * requires radical change in order to effect a satisfactory solution." But we may rest assured that this radical change will be made sooner or later with far less effort than was required to pass the original act thirty years ago.