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# The Copyright Law and the Press.

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AN ESSAY

TO SHOW

THE NECESSITY OF AN IMMEDIATE AMENDMENT

OF

THE COPYRIGHT LAW

UPON THE REMOVAL

OF THE

STAMP DUTY FROM NEWSPAPERS.

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1855.

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COPYRIGHT LAW AND THE PRESS :  
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THE Bill now before Parliament for the Repeal of the Newspaper Stamp Duty has caused an excitement and agitation, which extend through the length and breadth of the land: the measure, even in the midst of the war, has become one of prevalent and general discussion; yet, strange to say, a subject connected with it, and upon careful attention to which its eventual prosperity will mainly depend, suffers much from neglect. This subject is the Copyright law, which, under every circumstance, should be the basis to support all reform connected with literature, newspapers, and the press. If the law of Copyright be not adequate to protect the newspapers when the stamp is off them, there needs no great foresight to augur the confusion, litigation, and loss to individuals, that must necessarily ensue. The first obligation, therefore, of all interested in the stamp duty abolition is, to make a searching inquiry into the state of the Copyright law, and to ascertain whether that law be of strength sufficient to nourish and support the change in newspaper legislation. We should, in fact, abstain from a further plantation of the tree of knowledge until we find whether or not the ground beneath it be sound and suited for its growth. Such precaution has yet to be taken. The

condition of the Copyright law has still to be considered and cared for.

In the debate in the House of Commons, on the 26th March, all was said that could be said on the subject of newspapers, with the exception that the Copyright part of the question was hardly touched on or heeded, beyond an allusion to it in Sir E. Bulwer Lytton's masterly harangue, and some brief observations of the Attorney-General. Nevertheless, and be it the object to prove so here, the actual state of the Copyright law is clearly and dangerously deficient. Newspapers, when unshielded by the stamp duty, must not expect to find protection under that law as it stands; if they do so, they will be wofully disappointed.

With due deference to what was advanced in the debate by so able a lawyer and politician as the present Attorney-General, it may nevertheless be urged, that the copying of one paper from another, long tolerated by custom, will, on removal of the stamp-duty, become even more common than now, and will be of far more serious moment to each individual journal wishing to preserve its circulation. For instance, will not the country paper that can be sold unstamped in its own town have a fresh and cogent inducement to transcribe the parliamentary and other reports and articles from the London journals, and thus, if permitted, supersede their stamped provincial sale? Is it not also pretty certain, if the present tolerated piracy be suffered to continue, that cheap reprints, say at a penny each, of the leading contents of the morning papers will appear even in an hour after publication of the originals. In fact, the literary pirate will have a thousand new temptations placed in his sight and way to invade the property of others. Let us, therefore, look into the present law, and see if it has

really a guard against this probable system of wholesale plunder.

At the very onset of such investigation there exists a doubt as to whether a newspaper comes at all within the protection of the Copyright Acts. The question has never been decided or even discussed in a court of justice, yet the better opinion would seem to be, that a newspaper has a copyright if it choose to exercise it. Still the doubt would at once create litigation : and this is only a preliminary embarrassment ; there is still a more serious one. Let it be granted that a newspaper has a copyright to the full extent of every other periodical work, nevertheless it will find itself but badly off, since its redress against piracy is rendered extremely hard of attainment, from the peculiar provisions of the 18th section of the 5 & 6 Vic., c. 45, (the Copyright Act). Pursuant to that section, the proprietor of a periodical can have no property in any articles, (except those written by himself,) unless there be in every case, in addition to payment, a special agreement, prior to publication, with the parties employed, that the copyright in these respective articles is to belong to such proprietor.

One moment's consideration will show what a serious impediment this section will be in any proceeding for piracy. If the proprietor himself sue, he must prove this prior agreement, which it will be often very hard, and sometimes impossible to do. A writer, though willing to communicate his lucubrations, may be unwilling to part with his property in them ; and the section, be it observed, leaves no middle course. No license to publish will do. The writer, or the newspaper proprietor, must have the copyright wholly to himself. In some cases, too, such as in letters from anonymous correspondents, which, like those of Junius, might be of infinite value to the journal,

it would be impossible to establish the requisite proof. Again, the section entails on the proprietor the divulging of the author's name; a matter of no little importance when the press is so chary of its secrecy. To all this, it may be replied, let each writer, and not the proprietor, be the plaintiff; but that will be an unlikely course, because, even though costs be guaranteed, authors, critics, and other gentlemen connected with the press will shrink from being thus brought invidiously before the public, and subjected to all the unpleasantness of cross-examination and animadversion in courts of justice. The very parties they would be called on to sue might be friends of their own. The position of an author, active in such proceedings, would surely damage him in the arena of literature; his very success in one quarter might take from him in another his means of subsistence, dependent as such means frequently are on a plurality of masters. In fine, the more this 18th section be viewed the more does the conviction come, that it will afford pirates, in the majority of law-suits, ready and insuperable means of defence.

Another question here casually presents itself. Is there at present copyright in parliamentary reports? They are obtained through a breach of privilege; they are not original compositions; they are only the reproduction of certain debates which, if they can be likened to anything within the scope of copyright protection, have some resemblance to lectures; and of these, it should be remembered, an unpermitted publication may be pirated with impunity.

Abridgements of reports and articles will, whatever may be said to the contrary, multiply, will be found injurious to their originals, and will afford a fertile source of litigation. The law is now so doubtful as to abridgements,

that it is actually impossible to say positively whether an abridgement may or may not be lawfully made.

Such are some of the difficulties (for there may turn out to be more) which newspapers will have to contend with if they wish to preserve an exclusive right to their contents when the stamp is removed : these difficulties, the writer humbly suggests, may be at once provided against by a simple statutory declaration stating what copyright a newspaper is to have, and how it is to preserve it.

In framing such an enactment, aid might be obtained from the 7th section of the International Copyright Act, the 15th & 16th Vic., c. 12, relative to foreign newspapers, which provides that there shall be a preservation of the copyright of any article where a signification of an intention to preserve such copyright appears on some conspicuous part of the paper or periodical.

With regard to another subject connected with the proposed alteration of the Stamp law, viz., the danger of its giving rise to immoral, indecent, or scurrilous publications, there need, really, be little fear on that score. Were even the tone of public feeling less healthful than it now fortunately is, the powers the law has, especially in cases of personal libels, are quite strong enough to protect the public from such misfeasances. Yet there exists a mode of vindictive defamation more common than is generally supposed, against which it would be well if some further safeguard could be devised. It is that species of libel which, under the semblance of criticism, directs its attacks, regardless of their real merits, against authors, actors, musicians, painters and other persons connected with the fine arts, and often does them injury both cruel and unfair. In one of the admirable prefatory chapters of "Tom Jones," Henry Fielding writes

thus—"There is another light in which your modern critics may, with great justice and propriety be seen, and this is that of a common slanderer. If a person, who pries into the characters of others with no other design but to discover their faults and to publish them to the world, deserves the title of a slanderer of the reputation of men ; why should not a critic who reads with the same malevolent view be as properly styled the slanderer of the reputation of books ?"

The system of book slandering has survived the days of Fielding, and perhaps was never more practised than at the present day. Most persons connected with literature, the drama, or the fine arts, are well aware of this ; for it is but too notorious, that the critical praise or blame of an author, actor, or artist, will frequently depend on the influence or indirect profit he may bring to bear on the journal that notices him, or upon the previous feeling that that journal may have towards him. This is unrighteous, and, in the case of an actor, is particularly injurious and oppressive, as he mainly rests, more even than an author, on his exertions for his living. To go to a theatre with the predetermination of hissing, and there to hiss a performer, have been declared to be illegal ; and parties who combine to do so may be indicted for a conspiracy. Why should the same foregone conclusion and intention be allowed to screen themselves under the guise of criticism ? Slander of this description is all the more dangerous, because its iniquity, unlike immoral writing and personal scurrility, is not evident to the reader ; and because journals, with pretensions to respectability, can, as they but too often do, engage in the practice of it without their secret and cowardly motive being made manifest. The law at present shows no way of reaching this insidious offence ; but in any new legislation it might be provided,

that all reviews and criticisms on the productions and labours of literary and professional men should bear the names of their respective authors. This, it is easy to perceive, would prove a powerful protection against those means of libel which do but endanger the true criticism that alone should be allowed to guide public taste and approbation.

If, as it is hoped, an act relating to copyright is to pass to meet the alteration of the law with regard to newspapers, the opportunity should be taken of including, in such act, many further amendments, of which the Copyright law is now sadly in want. The following may be suggested as a few of them :—

There should be a stop put to applications to the Court of Chancery in questions of piracy, now that the common law courts, since the last Common Law Procedure Act, 1854, afford a full and cheap remedy by injunction as well as action. A vindictive plaintiff should no longer have the power, for some trifling case of piracy, to drag his poorer opponent into Chancery, and ruin him there with the mere cost of the suit.

There should be a proper officer, one of learning and experience in Copyright Law, appointed with discretionary powers at Stationers' Hall—a kind of commissioner or assessor, who should be able to decide on questions of registering and protecting books and journals, and objects of copyright registration. His decision, if objected to within a certain time, might be made subject to appeal to a court or judge. When one considers that much copyright litigation now arises from the want of some guide of legal and judicial qualification at Stationers' Hall, it will be easy to understand the utility of such an assessor or commissioner. If newspapers are to seek registration and information at Stationers' Hall, they will, to their serious detriment, find that place, as now



constituted, but of minor avail or utility. Some superior commissioner will alone be able to make their new legislative position practicable and intelligible.

There should be a fresh arrangement about a deposit at the British Museum, and an equivalent, such as proof of publication, given by that deposit to the depositor. When the stamp is off newspapers, the British Museum authorities, under the present law, will be placed in an awkward predicament with regard to journals: their duties in the securing of a receipt of each particular paper will be by no means easy. They cannot be forever prosecuting defaulters, and the only way to relieve them from so invidious an occupation will be to let newspapers (and books also) derive some commensurate good to themselves from the very act of depositing their copies at the Museum. This suggestion merits very serious consideration.

There should be a copyright given to paintings. Can it be believed that a painting is now totally unprotected? Yet it is so, and any minor artist may pirate the work of his greater contemporary with perfect impunity.

The powers of the 5 & 6 Will. IV. c. 65, an Act for preventing the Publication of Lectures without consent, should be increased and enlarged, so as to include within its protection sermons and all kind of orally delivered instruction of a religious, moral, or proper tendency.

Many minor ameliorations remain, too numerous here to detail, which will readily suggest themselves to the framers of a new Copyright Act. In fact, it is not the facility of making the amendments, but the spirit to start them in Parliament that is wanting. Strange it is that, among such a host of learning and talent as our Senate now presents, some successor of the late Judge Talfourd, of honoured memory, does not already come forward, at the very idea of the need, with a bill to finish

the great undertaking which that poet-statesman so energetically and effectively began, and which is to afford, according to the words in the preamble of the Copyright Act, "greater encouragement to the production of literary works of lasting benefit to the world." Sir Edward Bulwer Lytton, it is true, is still in the House; he has done much for literary and dramatic legislation: his eloquent speech of the other evening shows he has the soul and the power to do more; but the task should not be entirely thrown on one so engaged as this distinguished and laborious author: some member should come forward able to give the subject his sole attention. There never was a better chance for the cause of knowledge than now. The Government is all favourable to it, and naturally so; for some of its own members, whether Lords or Commoners, and one Earl in particular, rank among the most popular authors of the day. In the debate of the other night, the Attorney-General (how unlike his predecessors of some thirty years ago!) breathed but an anxiety for the removal of all restrictions upon the promulgation of intellectual thought and the freedom of individual opinion. There can occur no impediment to Copyright amendment, if any active member, of either House, will but undertake to inaugurate the measure. In the hope that such a supporter may speedily appear, the writer, relying on some insight and experience he has acquired in Copyright jurisprudence, respectfully puts forth these suggestions, his earnest object being to draw attention to a literary reform so urgently required, so easy to be effected, and so likely to prove eminently and universally beneficial.

*Temple, 1855.*

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 measure. The bill which I have mentioned in the course of  
 the evening is now in a Committee of the House, and  
 will be brought on in a few days. I have  
 the honor to be, Sir, your obedient servant,

