

CANADIAN COPYRIGHT.¹

(The New Law of the 13th June, 1923, and the Conflict with the United States).

The conflict between Canada and the United States following upon the former's passing of the Copyright Act of 4th June, 1921, becomes more and more acute. This Act provided (as a reprisal) for a system of compulsory licenses in the interest of the Canadian printers and against that of the American authors.

Has this conflict reached its crisis and may we soon expect it to subside, or will it become chronic and endemic? We do not know; but we can only repeat, in face of this dangerous situation, what we have already said in our issue of April 15th, 1923 (pp. 37-42): "It is a conflict where, in case of defeat, the International Union will have to defray the costs for the stake is: Shall Canada adhere without reserve to the Revised Berne Convention and shall the United States enter our Association of Nations?"

We were obliged to discontinue our narrative² of the matter at a point where the Hon. J. A. Robb, Minister of Trade and Commerce for Canada, had introduced Bill 24 before the House of Commons, to amend and modify the Act of 4th June, 1921—which the British Government had not yet promulgated—by striking therefrom sections 13, 14, 15, and 27 which had reference to the issue of the Licenses aforesaid and providing for its coming into force on the first of July of the then current year.

This Bill, as we foresaw (p. 38), met with organized opposition on the part of Canadian publishers of magazines and printers, and went through many vicissitudes, in its various stages, before the Canadian Houses of Parliament, which it would be interesting to follow. However, we shall not dwell upon them at length here, because, in the first place, we desire to be brief for certain reasons we have already declared (p. 42) and, secondly, because the result only is of importance for the purpose of this article.³

¹ Translation of an article from "Le Droit d'Auteur" (Berne, Switzerland) of September 15th, 1923.

² See "Le Droit d'Auteur," 1923, p. 38.

³ See stenographic report of the debates of the House of Commons, of the 24th, 27th and 30th April and 28th May, especially pp. 2224, 2377, 2433, 2532 and 3274, and Senate debates of 9th, 14th, 16th and 17th May, especially at pp. 517, 536, 611 and 622. See also Summary in "Publishers' Weekly" of 26th May (No. 21, 1571).

The Bill was finally amended on two important points: Section 2, instead of suppressing or repealing the sections of the Act of 4th June, 1921, which were contested, allows them to stand, but on terms suggested by the Government and adopted in Committee by a vote of 55 to 34:

“Sections 13, 14, 15 and 27 of the Copyright Act, 1921, shall not apply to any work the author of which is a British subject, other than a Canadian citizen, or the subject or citizen of a country which has adhered to the Convention and the additional Protocol thereto set out in the second Schedule to the said Act.”

Moreover the date of the coming into force of the Act as amended is fixed for the 1st of January, 1924, unless earlier brought into force by the Governor in Council.

. . . Here, then, are the consequences which this Bill No. 24 passed finally by the Houses of Parliament (thanks to the House of Commons) on the 28th May, 1923, and assented to on the 13th June last, and now become law, will have: In the first place it will come into force, by the authority of Parliament, not later than the first of next year. True, the Governor in Council is empowered to bring it into force earlier—a power which under all the circumstances would not likely be exercised; but he has no power to extend the time beyond the date mentioned as it is fixed by legislative authority.

In the second place, the Act of 1921, as amended by this Bill, maintaining conditionally the system of compulsory license, will, from the 1st of January next, affect all authors of countries not in the Union, above all Canadian citizens and their neighbors in the United States.

Possessed of this legislation, will Canada be able to adhere to the Revised Berne Convention? Let us see what this means. Canada will be free to apply the new legislation to those authors of the United States who write and publish their works only in that country (or in some other country not a member of the Union); but Canada will be able to apply it to Americans, if they remain outside the Union, and publish their works exclusively in a Unionist country (England or France, for instance), or even simultaneously, on the same day, in one of these countries and in the United States; *only* in the event of the British Government advising the Swiss Federal Council that Canada intends to avail itself of the restrictive treatment provided by Section 1 of the additional Protocol of 20th March, 1914, as regards authors who are citizens of the United States—not

domiciled in a Unionist country (see "Le Droit d'Auteur," 1914, p. 45).

In fact, without this declaration of exceptional and unfavourable treatment, to be applied to Americans, the latter would continue to enjoy, in entirety, the advantages conferred by Section 4(3) and 6 of the Revised Berne Convention.⁴ No country has as yet applied the comminatory measures provided for by the additional Protocol of Berne, but the complications which would result therefrom would be considerable and not at all to be desired.

Likewise, Canada could in no way exact from her own authors the observance of Sections 13 to 15 and 27 of the new Act, where these authors limit themselves to publishing their works in another country of the Union.⁵ *Already, under the present régime* of the Berne Convention, 1886-1896 (and evidently up to now this régime has not caused any inconvenience to Canada) the work of a Canadian author published in France, for example, becomes a French work, and must be treated, by virtue of the said Convention, as such in all countries; and is therefore exempt from all conditions and formalities other than those provided by the country of the work's origin, in this case France. This would be all the more true under the Revised Berne Convention, inasmuch as this provision, which was assented to since the foundation of the Union, is, so to speak, strengthened by either Section 5 or by the principle of Section 4 by virtue of which the enjoyment of the rights conferred is, within the Union, absolutely freed from all formality.

These provisions are imperative. Canada has been obliged to respect them so far under their old form, and will be equally obliged to respect them in the future under their revised form. In other words, the new Canadian Act must give priority or precedence to the Convention on this point in respect of the category of Canadian citizens who find themselves in the situation indicated, and can invoke the rule of the Union.⁶

⁴See also the opinion of Mr. Sandwell, Secretary of the Canadian Authors Association, Montreal "Gazette," 4th May, and "Publishers Weekly," 19th May.

⁵We are not concerned here with the situation made by a Canadian author publishing his work for the first time in the United Kingdom or another Colony or Dominion, i.e., in another part of British territory. See "Le Droit d'Auteur," 1916, pp. 17-31. From the point of view of the Union and other Unionist countries he thus creates an English work.

⁶Referring to previous page 2, however, see our observations relative to United States and its becoming a member of the Berne Convention in "Le Droit d'Auteur," 1923, p. 40, 3rd col.

As far as the United States are concerned, they can only prevent the reprisals which those who control the Canadian industry have succeeded in imposing and which threaten them beginning from the new year, by deciding to become members of the International Union in order to benefit by the amendment made to Section 2 of Bill 24, or by arriving at some kind of bilateral agreement with Canada relating to the matter. There are obstacles to both these alternatives. The settlement of such a difficult question cannot be arrived at on a moment's notice, and is rendered all the more difficult by the bad example set by the United States as inventors and upholders of the "manufacturing clause" which is more onerous and more general than the Canadian system of licensing.

Furthermore, time is short. The Canadian Parliament, which alone can extend the period for the coming into force of the new Act, will not meet till January. Will it be willing to consent to such an arrangement, now that supporters of the law of retaliation have obtained their end by a majority of more than 10 votes in the Senate? However this may be, one cannot help anxiously wondering whether, in the absence of any real and efficient protection of reciprocal copyright, piracy will be revived to the great prejudice of the authors of both countries, whose markets would undoubtedly be flooded with spurious editions.

There would be no conflict if the United States would join the Union before the end of the current year. But their Congress will not meet before December, and consequent upon the death of the President of the United States, the representatives and senators will have other things to occupy their attention. Moreover, the supporters of this measure are disunited and the Separatist action of last January, as well as the unfortunate concession then made to the representatives of the Labor Party by representatives of the author (see "*Le Droit d'Auteur*," 1923, p. 15 and seq.) have greatly imperilled the success of the movement in favour of the Union and have soured the minds of the interested parties.

But we know that devoted friends of the Union are at work, and they hope to arrive at an agreement by the month of December, for the drafting of a Bill to meet, in any case, the most pressing needs, and to pave the way for their country's entering into the Union.

This is a matter that should be done in the fundamental interest of all countries concerned, unless they wish to add to the causes of discord, already sufficiently numerous among them.