INTERNATIONAL COPYRIGHT

PAPERS RELATING THERETO

IN

MACMILLAN'S MAGAZINE

WITH REJOINDER
PREFATORY NOTE.

Ten first of the following papers was written for Macmillan's Magazine, at the request of the editor, who wished to give his readers an American view of International Copyright. My purpose was not discussion of abstract right (which, for convenience, was admitted), but of a practicable understanding between concealed differences of opinion, by means of which British authors could secure in the United States, and American authors in England, all the privileges of the domestic copyright laws of those countries respectively.

In the same number of the magazine in which my paper was printed appeared a reply, which I had been given to understand would be deferred until the following number. The anonymous author of this reply having made a quibbling use of a certain expression of mine, placing upon it a meaning entirely foreign to my intent, and utterly without foundation in fact, I wrote a brief rejoinder, designed to set the matter in its true light before the readers of Macmillan's Magazine. This rejoinder was refused admission by the editor, who, as a compromise, procured its insertion in the London Academy. To publish the complete refutation, furnished by English authorities, of the position assumed by the literary attorney retained to answer my paper, would no doubt have been a source of mortification to the editor; but the refusal to put it on record in the pages of his own magazine was not only a surprising discourtesy, since he had invited the discussion of the subject, but it was a plain confession of the weakness of his own side in the controversy.

The three papers are now published together, and submitted to the careful judgment of those who are interested in the subject of International Copyright.

S. S. Conant.

New York, November 26, 1879.
AN AMERICAN VIEW OF INTERNATIONAL COPYRIGHT.

From Munseil's Magazine for June, 1879.

The question of an international copyright treaty between the United States and Great Britain, which has been the subject of much discussion and inconclusive discussion for many years on both sides of the Atlantic, appears now to have assumed a phase from which practical results may be reasonably expected. There has been of late a gradual approach between the authors and publishers of both countries with regard to the general principles on which the question may be settled with advantage to all concerned. Concessions on both sides have narrowed the range of discussion, and brought it down from the region of sentiment and abstractions to that of practical measures. There still exists, of course, a wide divergence of views with regard to the abstract rights of authors in what is called "labor production;" and the question whether ideas, or the form only in which they are expressed, may be copyrighted is one upon which theories will probably differ and argue to the end of time. The chief objection to this otherwise harmless intellectual amusement is that while, like most metaphysical discussion, it leads to nothing, it diverts attention from measures that might lead to tangible, practical results. It is, therefore, gratifying to observe that so eminent an advocate of the abstract rights of authors as Professor Stanley admits that he insisted upon the acknowledgment of these rights at the present time would be in the highest degree galactic, because, to quote his own language, "it is not worth while in real life to attempt to get things which it is impossible to get."

Where men of eminence, whose opinions are entitled to consideration and respect, hold widely divergent views of a question of this kind, involving practical results, it is evident that a settlement can be reached only by mutual concessions. The agreement must be in the nature of a compromise. When, therefore, we come to consider the important and now pressing question of international copyright, which involves material interests as well as abstract rights, it behooves us to look for a substantial practical basis for the equitable adjustment of the claims, rights, and interests of authors, publishers, and society; a common ground upon which all can meet by making concessions that impair no material rights, and which accord with the prevailing ideas of what is due to authors. It must be conceded at the outset that those who hold that literary property exists by the common law, and that it should be perpetual, like other kinds of property, have the best of the argument. It is, indeed, a strange perversion of justice to limit an author's right in the creations of his mind, and a time may come when this monstrous idea must cease to be a stain on our statute-books. But the world has not yet reached that stage of progress. It is still as true as it was in Dr. Johnson's time that "the consent of nations is against" perpetuity in literary property; and the most that society is at present will-
ing to concede is that the author is entitled to "an adequate reward" for his labors.

The question of international copyright is still more complicated, since it involves material interests of the highest importance, and a departure from a long-established tradition of policy. Permit me, before proceeding to the discussion of practical measures, to say a few words in regard to American sentiment on this question, and also to lay before your readers some of the difficulties with which American advocates of international copyright have still to contend. An experience of more than twenty years on the daily and weekly American press, and long and confidential relations with leading booksellers of this country, enable me to speak with some authority on this subject. I do not write as the advocate of any special form of international copyright, my object being merely to appeal to your request for information with regard to American views on this new pressing question. The first step toward coming to an agreement in such a case is to understand the other. I do not think you in England have ever quite understood our position in this matter, or the motives from which American publishers, as a body, have opposed the salves of international copyright hitherto advanced upon your part. It is, for example, a common mistake in England to suppose that Americans of the present day are, as a people, opposed to such a measure, or that they approve of "literary piracy." They are not in favor of taking the same productions of English or other foreign authors without suitable recompense; and the causes of American publishers, on principle, have been for many years toward foreign men of letters to show that they have no disposition to take advantage of the absence of international copyright. It is true that in the early days of our national independence, when our country was poor, when our authors were few, and when the facilities for multiplying books were comparatively limited, our American publishers could afford to neglect to protect the works of popular foreign authors. Indefensible as the practice was in point of morals and justice—and few Americans of to-day would think of defending it—it had one good result, namely, the rapid development of a national taste in reading, a wide-spread popular craving for the pleasures and the benefits of literature, which have created in this country a market for English authors large and in a few cases more lucrative, than that which they possess at home. This has been true for more than a generation of readers.

In those early days the works of Byron, Scott, Moore, Wordsworth, and other popular authors were brought from hand to hand, to the extreme verge of advancing civilization. They were eagerly read in cities, in villages, and in Western frontier settlements, where the rude log-cabin stood in the forest clearing, the outpost of progress. I remember hearing an old gentleman describe the gatherings at the "stern" of a little village in Vermont, the Green Mountain State, when the mailcoach, or stage, as it was called, was expected with its freight of letters, papers, and books. The interest and excitement with which the man was talking about Scott's last novel, which had gone the rounds of the village, and was wondering when the next one would arrive, one of them exclaimed, "I wish Scott knew how many adorers he has in this little town." These men were poor, in a very literal sense, and consumed their bread by the sweat of their brow; but they were all intelligent and well-read, one or two of them college graduates. Expensive books would have been out of their reach, and yet for the facilities afforded by cheap reprints, they would have been unable to supply themselves with the means of education and culture. This was the case with the vast majority of American readers in the first quarter of this century—the men who cleared the forests, made broad the pathway of civilization, and prepared the vast market for books which is now open to English authors in this country. It is safe to assume that an international copyright at that time, while it would have added very little to the revenue of English authors, would have retarded the progress of American culture at least half a century, and delayed for many years that wide-spread intellectual development from which our authors reap so large a benefit.

The evil was comparatively small and transitory; the benefits were insensible and permanent.

But, you may say, belongs to the past; and what of the present and the future? What are the "practical" difficulties in the way of a just international copyright we shall state them as briefly and clearly as possible.

Few American writers, few American publishers, deny the justice of the principle; but there is a general feeling here that international copyright is urged on your side of the Atlantic chiefly in the interest of British publishers, that it is a scheme by which they hope to capture the American market. This feeling is especially strong in the South and West, and it is heightened by the fear that, by introducing English methods of publication, the measure would enhance the cost of reading. America is emphatically the land of cheap books. Our people buy and keep the volume that stands on the shelf, instead of hiring them from circulating libraries. These institutions, as popular in England, are little known in this country, for the reason that our people are sparsely scattered over vast stretches of territory. Our fifty millions of population are a continent larger than the whole of Europe, would be compelled to do without books under the system which works so admirably in your long list of states. Your Muse can mail books at a cheap rate to subscribers in every part of the United Kingdom, and get them back from the farthest limit within a week or two days. But a Boston or New York literary could not lead books to subscribers in Nevada or Dakota, thousands of miles away; the profits of such a method of circulating books would not justify the cost and risk of loss incurred. Besides, the system is distasteful to our people, who like to form their little libraries of their own. Books for general circulation in America must be issued, therefore, in a comparatively cheap form. Your three-volume novel, published at a guinea, here shints into a modest octavo volume, in paper covers, and is sold at a price varying from fifty cents to a dollar.

Owing to this system, the names of Dickens, Charles Reade, Wilkie Collins, Thackeray, George Eliot, and a hundred other English authors, are as well known in the cabin of the active in the remote West as they are to their own country. You can understand the suspicion with which every scheme is regarded which threatens an abridgment of cheap reading among a people to whom reading is a necessity of life, and to whom dear books are a luxury. But this has nothing to do with the right or wrong of the question at issue, it has an important bearing on the settlement of that question. As a matter of fact, our people see no difference between paying an author for literary production and paying a merchant for his commodities; but they are fully alive to the advantage of buying books, like other things, at the cheapest market. Their objection has always been to the shape which almost every scheme of international copyright has assumed, and not to the underlying principle. Nor is this first stand in favor of books and knowledge for the multitude the servility of a great nation. We are keenly alive to the necessity of the general diffusion of intelligence. Upon it depends the perpetuity of our republican form of
government. Enslavement upon our shores a nightly sight of ignorance and superstition. We welcome the poor, the outcasts of every hand. They come hither with vague and wild ideas of popular liberty, and mingling at once in our civil affairs. They vote, they are eligible to office; in fact, every political position, except that of President, is open to foreign born as well as to native citizens. They must be educated, must become intelligent, if we would preserve our institutions from decay. There is a wide-spread feeling that the Old World, which contributes this mass of ignorance and superstition to our population, should also contribute to the alleviation of the reading life. You can readily understand, therefore, the jealousy with which the international copyright measure is watched, and why American legislators should be wary in passing enactments for the benefit of foreign authors or publishers as against the interests of American readers. This does not, of course, imply literary piracy, nor is it a levy on the works of authors; it implies simply a determination to keep in our own hands the control of the book market in this country, in order to prevent foreign books from becoming favored over our own. Such a policy would probably be contrary to the interests of the great mass of the people. Having thus briefly indicated the prevailing sentiment of our people in regard to international copyright, I will now trace in outline the history of the numerous efforts made in the United States to secure that measure, and then pass to the consideration of the scheme which appears at present to find favor with American authors, publishers, and readers.

The first American proposition of this nature was made in 1837, when Henry Clay presented to the United States Senate a petition of British authors asking for protection for foreign works in this country. The author was referred to a committee of liberal and fair-minded Senators, among whom were Clay, Daniel Webster, and Buchanan. They soon made a report through their chairman, Mr. Clay, urging Congress to pass an international copyright law, and submitting a bill for that purpose. The committee took high ground on the question of the rights of authors, and strongly condemned the distinction made by law between literary property and merchandise. They said:

"That authors and inventors have, according to the practice among civilized nations, a property in the respective productions of their genius, inseparable; and that this property should be protected as effectually as any other property is, by law, follows as a legitimate consequence. Authors and inventors are among the greatest benefactors of mankind. They are often dependent exclusively upon their own mental labors for the means of existence, and are frequently, from the nature of their pursuits or the constitution of their minds, incapable of applying that provident care to worldly affairs which other classes of society are in the habit of receiving. These considerations give additional strength to their claim to the protection of the law.

"It is well established that literary property is entitled to legal protection, it rests upon reason and equity, and is afforded wherever the property is situated. A British merchant brings or transmits to the United States a bale of merchandise, and the moment it comes within the jurisdiction of our laws they cover around it an official security. But if the work of a British author is brought to the United States, it may be appropriated by any resident here and reproduced, without any compensation whatever being made to the author. We should be all ashamed if the law tolerated the least invasion of the rights of property in the case of the merchandise, while those that truly belong to the works of authors are exposed to daily violation, without the possibility of their invoking the aid of the laws.

"The committee think that this distinction in the condition of the two descriptions of property is not just, and that it ought to be remedied by some safe and cautious amendment of the law." No action was taken on this report, nor on Lord Palermo's invitation made the year following, to co-operate with Great Britain in establishing international copyright between the two countries. The subject had not then awakened general attention, and matters of more pressing interest crowded it out of sight.

The committee came up again in Congress in 1853. Mr. Edward Everett, then Secretary of State, took his influence in favor of the measure; and several prominent publishing firms gave it their support, on the condition that it should embody the following provisions:

1st. That the foreign author must be required to register the title of his works in the post-office department before publication abroad.
2d. That the work, to secure protection, must be issued in the United States within thirty days of its publication abroad.
3d. That the prior must be wholly manufactured in the United States.

Still, Congress took no action in the matter, for reasons which dropped out of sight, again, to be revived by a society organized under the title of "The Copyright Association for the Protection and Advancement of Literature and Art." Its field was wide. Its grand object was to promote the enactment of a just and salutary international copyright law for the benefit of authors and artists in all parts of the world. A memorial was drawn up in accord with this statement of principles, for presentation to Congress, but it recommended no specific measure, and suggested no practical scheme on which Congress could act. In the autumn of 1858, however, Mr. Baldwin, of Massachusetts, reported a bill which had been prepared with the co-operation of the executive committee of the association, extending protection to the works of foreign authors, provided such works were wholly manufactured here and published by an American citizen. In presenting the bill the committee said: "We are fully persuaded that it is not only expedient, but in a high degree important to the United States, to establish such international copyright laws as will protect the rights of our American authors in foreign countries, and give similar protection to foreign authors in this country. It would be an act of national honor and justice, in which we should find that justice is the wisest policy for nations, and brings the richest rewards." This bill was quickly "shelved," owing in part to the excitement attending the impeachment trial of President Johnson, which at that time absorbed the attention of Congress and the public.

Bill of substantially the same import were subsequently introduced in Congress; but no decisive action was taken until February, 1857, when Senator Morrill, of Maine, chairman of the joint committee of the Senate and House of Representatives to which the subject had been referred, presented an adverse report, which seemed, for the time being, to dispose of the whole matter. The question was considered from two points of view, that of protection and that of commerce. The committee had first to inquire whether the Constitution of the United States conferred the power to pass an international copyright act; and, secondly, whether such an act would be expedient. They decided that the first point was involved in considerable doubt. The Constitution provides that Congress shall have power "to promote the progress of science and the useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." This language, says the committee, is not sufficiently comprehensive, decisions, to include all authorships; but as the question of international copyright had not been thought of when the Constitution was framed, it is safe to assume that it was not within the contemplation of the Constitu-
tion, whatever interpretation the language may be thought to be susceptible of. To the argument as to the mandatory character of the provision in the interests of universal authorship, it may be replied that none but citizens could properly lay claim to protection of individual rights, and that, under the Constitution, these were all subordinated to the interests of science, and that whatever involves the protection of the one must show that his demand is in at least compatible with the other."

The committee then proceeded to discuss the question of expediency. Their inquiry went carefully into the subject of the comparative cost of books in England and the United States. They found that, in a list of seventy-five books, the average price in England was $1.00; whereas the average price of the American reprints of the same books was only $1.80, or considerably less than half. They also found that English reprints of American copyright books were much cheaper than the American editions. These facts led to the conclusion that an international copyright would raise the price of books in the United States, and tend to hinder rather than advance the cause of science and art.

The report of the committee closed as follows: "In view of the whole case, your committee are satisfied that no form of international copyright can fairly be urged upon Congress upon reasons of general equity or of constitutional law; that the adoption of any plan for the purpose which has been laid before us would be of very doubtful advantage to American authors as a class, and would be not only an unquestionable and permanent injury to the manufacturing interests concerned in producing books, but a hindrance to the diffusion of knowledge among the people and to the cause of universal education; that no plan for the protection of foreign authors has yet been devised which can unite the support of all nearly all who profess to be favorable to the general object in view; and that, in the opinion of your committee, any project for an international copyright will be found upon mature deliberation to be inexpedient."

It must be admitted that the committee were perplexed by the diversity of the plans urged upon their attention by the advocates of immediate and radical action on the subject. One of the most prominent members of the Copyright Association, Mr. Charles A. Liveris, devised a sweeping measure providing that "all rights of property secured to citizens of the United States by existing copyright laws are hereby secured to the citizens and subjects of every country the government of which secures reciprocal rights to the citizens of the United States." The manifest absurdity of this proposition, which left the American book market open to foreign publishers without restraint, convinced the number of its adherents to a select few. An equally indefensible measure, one similar in which was afterward laid before your Copyright Commission, was brought forward by Mr. Morton, a publisher of Louisville, Kentucky, providing that any one should be at liberty to reprint a foreign book on condition that he would engage to pay the author or his representative a royalty of ten per cent. on the wholesale price of all copies sold. Mr. Morton, in favor of the same, contended that the freedom of foreign edition in the American market, leaving competition wholly unimpaired. This science assumed as little notice as Mr. Britton's measure; and it is adopted here only as one of several conflicting and infinitely imperceptible plans which were pressed upon the attention of the committee. Convinced that the whole subject was in a middle, they came to the conclusion that it was the part of wisdom to let it alone, until the authors and publishers of both countries should arrive at a clear understanding of what they wanted, and agree upon some practicable scheme of action.

Here the question rested until last November, when it was revived in a note addressed by Means, Harper & Brothers to the Hon. Mr. Evarts, United States Secreta-
the measure ought to assume; whether, for example, Congress should provide for granting to foreign作者, of all countries, all the rights in this country which native authors enjoy, whether similar legislation occurs in other countries or not; or whether these rights should be secured by means of treaties with foreign countries, whereby reciprocal rights would be obtained for our own citizens. The first plan has been favored by several of our most eminent literary men, who hold that our government is morally bound to do justice to foreign authors within its own domain, without bargaining for justice to our own authors in return. These gentlemen, holding that an author possesses a natural right of property in his literary productions, inalienable except by his own act, and that he may do what he will with his own, claim that the government should recognize his right, and protect him in the enjoyment of it, to print his books when, where, and in what manner may suit his best; so that if he chooses to print in London, and nowhere else, he may publish the issue of his work in New York, and compel Americans, if they wish it, to import copies of the English edition at any price he may choose to put upon it. The laws of supply and demand, and the dictates of public policy, demand that the Institute of common sense, they say, may be relied upon to prevent abuses under this system. But of this we can not be sure. Mr. Rushkin, for example, who publishes his works in England at such a price that only wealthy people can afford to buy them, probably would not undertake the cheaper editions which have made his writings almost as familiar in this country as the novels of Charlotte Dickens. And if Rushkin should do this, why not others? It might be argued that English authors in general would not welcome the full effect of acting against their own interests, and that editions of popular works would be printed in London especially designed to suit the American market; but this is taking for granted that the English author or publisher would see his interest in selling a large edition at a low price, when the sale of a small costly edition would afford an equal secondary return. This is a verdict which Americans readers apprehended from an international copyright; and it ought to be well understood in England that they will not sanction any measure which would place it within the power of a British publisher to withhold an English book from this market, or compel them to buy the English edition. This may be regarded as a "dead fact." Even now in some cases the importation of a small London edition at a high price practically shuts our market against a cheaper issue. It is useless to argue that this has nothing to do with the abstract justice of the case; for, granting the validity of this objection, in the settlement of practical questions something must always be conceded to the wishes of the public, whose consent and protection afford stability to all rights of property. No member of society is superior to the obligations which society imposes, in return for the security which it establishes and maintains; and individual rights and privileges must always be subordinate to the general good. It is plainly deductible from the foregoing that the American idea of international copyright embraces one condition at least which may give rise to much discussion should a conference be appointed, and that is that the work of a foreign author, to secure the protection of copyright in this country, shall be manufactured and published here by a citizen of the United States. This means, to put it frankly, the exclusion of foreign publishers; it means that in granting to foreign authors the rights enjoyed by our own citizens we do not mean to place our book market under the control of those who do not understand it, who have no comprehension of the demand for cheap books in this country, and who would invade our territory with the sole purpose of mercenary gain. We see a great difference between the rights of foreign authors and the commercial spirit that seeks to obtain a foothold in our book market to the disadvantage of American readers. We are ready to grant the former with a liberality equal to that of any other nation; but in my William H. Angelou says in his letter to the London Times, "Any treaty which makes the English author and the English publisher joint parties to supply us with books, if negotiated by the two governments, would be repugnant to our people in a year." Do not misinterpret our position. Our people are not making war against English publishers for the benefit of Americans publishers; they are looking after the interests of the reading public only in thus making American manufacturers the condition of American copyright for a foreign work. We admit this to be a limitation of certain rights and privileges for which nations contend, and to which, in abstract justice, they would seem to be entitled; but every government has the right, as it has the power, under the law of "exclusive domain," to make such regulations as it may deem most conducive to the general good, even to the detriment of some individual interests. But it is difficult to see that any practical injury will result to either foreign author or publisher by instance of the British public, which is left in undisputed possession of the home book market; so Americans will attempt to evade his domain with an American copyright. As for British authors, they have already learned that their interests are quite safe in the hands of Yankee pirates, as some of your writers still persist in calling the men who for years have conducted the publishing business of this country with the most scrupulous regard for the rights of foreign authors. Nothing in the world could be more cordial and pleasant than the relations that exist between American publishers and British authors; and, I may add, between American and British publishers. Wherever difference of opinion may exist as to the terms of an international copyright, as at the necessity of such a measure, there is not in the whole United States a publisher of any standing who is not now inclined to deal as justly and as liberally with foreign authors as he would under the regulations of a copyright treaty. Your authors whose rights under such a treaty would be worth anything in this country make arrangements directly or through their home publishers, with American publishing houses, for the publication of their books in the United States on terms which it is doubtless an international copyright will improve to any great extent. In fact, I think it will be found that the parties principally benefited by such a measure will be the American publishers, whose reputations will no longer be at the mercy of garumelia in the trade. It may turn out that the advantages of international copyright in England and the United States have overcompensated its value to the authors of the two countries. Your popular novelists and poets—Charles Dickens, William Black, Thomas Hardy, George Eliot, Tennyson, Browning, Wilkie Collins, Mrs. Crank, and others who see also popular over here—seem to have their own terms with their English publishers, issued, of course, upon the commercial value of their books in this market. In many cases of reprints, the law of trade country has, until quite recently, and made most anomalous circumstances, the American publisher in the exclusive enjoyment of his right in foreign works thus acquired by purchase, and this value will be greatly increased, if at all, by international copyright, above what it was under the operation of that system. For about two years ago certain parties began to re-publish here the works of foreign authors, paying nothing for the privileges, and bringing out already cheap English rights on the books of the authorized reprint, which had not a large entry for priority and expense of publication. As a temporary measure of selfishness against the reprints competition, Harper & Brothers established their own "Franklin Square Library," in which they have printed a large number of English novels, narrative of travel, etc. The commercial law price at which these books are sold accounts for an increase paid to the foreign authors.
of your readers, I think, have any notion of the amount of money paid to British authors by American publishers. One New York house alone has paid more than $250,000 within a few years as royalties, or, what is equivalent to royalty, on reprints of English books; and other houses have conducted their business relations with foreign authors in the most spirit of liberality and justice. It is safe to assume, I think, that even the most popular of British authors, whose books have been paid for on a liberal scale, will find that the measure for which they have so long contended will not materially increase the income from American sales; and those whose books have been reprinted here without compensation to the author may rest assured that this was owing to the fact that the sale was not remunerative here, and that international copyright would make it larger. Not more than one in ten of the English novels offered here is reprinted; the rest are declined as unsuited to the American market. Legal protection will not make them less so, and it would be no inducement to print an unprofitable book that no other publisher could print a rival edition. It would be well, therefore, that English authors should not be induced by exaggerated estimates of the material benefits of international copyright.

On the other hand, a large number of American authors, whose books have been reprinted (perhaps I ought to adopt a British phrase, and say "printed") in England without their consent and without compensation, are more nearly interested in the success of such a measure. Your book-trade statistics for 1878 show that ten per cent. of the books published in England in that year were American reprints; and yet I am assured on good authority, the author, that the reprints of any rights on the part of American authors have been few and far between, and the payoffs lost incalculable in amount. In view of these facts an American may be pardoned for indulging in a quiet laugh at the lofty tone which the Royal Commissioners on Copyright assume in their report submitted to Parliament in June of that year. After reviewing the steady refusal of the United States to grant protection to British authors, the Commissioners say: "It has been suggested to us that this country would be justified in taking steps of a retaliatory character, with a view of enforcing equality that protection from the United States which we accord to them. We have, however, come to the conclusion that, on the highest public grounds of policy and expediency, it is advisable that our law should be based on correct principles, irrespective of the opinions or the policy of other nations. We admit the propriety of protecting copyright; and it appears to us that the principle of copyright, if admitted, is one of universal application. We therefore recommend that this country should pursue the policy of recognizing the author's rights, irrespective of nationality."" Considering that for at least twenty-five years past British authors have enjoyed all the material advantages of copyright in this country, while American books have been reprinted in England by the thousand without compensation to the authors, this again is a very hollow sesame.

But although Americans might gain in England by international copyright, another argument urged in its favor is of doubtful soundness. We are told that the predominance of English books in America repress native genius, or turns it from literature into other fields of activity. This may be deemed questionable, to say the least. International copyright will not limit the American demand for the works of popular British authors. The popular-
II. AN ENGLISHMAN'S VIEW OF THE FOREGOING.

From Maurice's Magazine for June, 1879.

Very early in Mr. Conant's memorandum we come to understand the point of view he occupies. He is not merely a citizen of the United States telling us what the citizens of the United States think of International Copyright, though he does that in very ample measure; he is in intimate relations with some of the principal publishers of America, and he writes under the immediate influence of those sentiments. "An expression of more than twenty years on the daily and weekly American press, and long and confidential relations with leading book firms of America, enable me to speak with some authority on this subject" of International Copyright. Let me say at once that I recognize the authority of Mr. Conant as an exponent of the views of leading book firms; but when he speaks of what "our people" think, I suspect that he attributes to their opinions a degree of definiteness and precision they do not possess. "Our people" in the States are exceedingly unlike "our people" in England if they have canvassed all things, even upon such a simple matter as International Copyright. Popular thought does not run so far here. As a lawyer who has had something to do with literature and something with legislation, and has some connection with any kind of any publisher, far or near, I am glad to make a few remarks on Mr. Conant's memorandum, but they must be taken for what they are worth, without any sanction, real or assumed, of popular authority behind them.

Mr. Conant tells us that the question of International Copyright, always important, has become "pressing." This convinces me that the world is, after all, pretty big. I had not heard anything of this new urgency that has arisen. English authors have given no sign of any sudden increase of interest in International Copyright. If English publishers have been conscious of any fresh development of its importance, they have kept the matter to themselves. What makes it "pressing"? Any author who has made his mark in England may get from the American publisher who regret his books such royalty as the latter may consent to allow him, and if these allowances are threatened, they have not as yet been so seriously endangered as to excite alarm; and there does not appear any reason why the English publisher should not face the situation with customary equanimity. Indeed, I do not find from Mr. Conant's memorandum any evidence that the public in the United States are so earnest that the question of International Copyright has become "pressing." He briefly reviews the action taken in the States in relation to the subject from 1827 down to 1873, and the impression left by this review is that "our people" are in a great calm about it. Here is Mr. Conant's own summary of the conclusions of the last committee that considered the matter: "Convinced that the subject was of national importance, the members of the committee concluded that it was the part of wisdom to let it alone, until the authors and publishers of both countries should arrive at a clear understanding of what they wanted, and agree upon some practicable scheme of action." It is clear that if International Copyright has become "pressing," this must be due to something that has happened since 1873, and we have no great difficulty in finding from Mr. Conant what is the secret of this new emotion. It is due to the action of some publishers out West, who have thought it expedient to revert to the simple practice of the early days of the republic. The Copyright Fathers of American freedom had a great love for literature, but their means were scanty. Like the first contributors to the Edinburgh Review, they cultivated the Muse on a little oatmeal. Moreover, they had no reason to be especially regarded of the rights, or supposed rights, of property of English authors. Accordingly, books were reprinted and no questions asked, and no acknowledgment made save that slight acknowledgment of the grateful spirit which flatters the self-love without filling the purse of the original writer. "In the early days of our national independence, when our country was poor, when our authors were few, and when the facilities for multiplying books were comparatively limited, our American publishers need the advantage of an absence of an International Copyright to reprint, without authorization and without payment, the works of popular foreign authors." The publishers reprinted the citizens read, and the result was that petty feudatation of spirit which Mr. Conant describes as occurring periodically in Vermont, and presumably elsewhere, when mail-brought foods spouse westward. I have not the slightest intention to throw unnecessary and useless blame on the printers and makers of that primitive time. The travelling Briton enjoys his Tchochka reprint, and brings it home, so that he may even be seen on the shelves of his local library, and he must be a very austere moralist who denies himself the liberty of cheap moral improvement. But years passed, the publishers of New York and Philadelphia became respectable, and began to remember the wants of the distant author. It is not clear how this feeling arose. It seems possible that as the cost of reproduction became less, and a larger margin of profit was realized out of the customary price of a reprint, it was felt that the privilege of the first produce of a book could be lost defined if it could be said that the book was reproduced in the author's interest. Whatever the origin of the change, the fact is the same, that the better-known publishers of the Atlantic cities commenced the practice of making voluntary payments to the original author, and to respect among themselves the title to exclusive reproduction founded on priority in the field. But two years since certain persons in the West—publishers of Chicago and St. Louis—indicated for themselves the original freedom of citizens of the United States to reprint the works of English authors, and they reduced their prices to make a market. They sold for sixpence or sevenpence a novel that was offered for sale by the respectable failure of the trade for a couple of shillings; and those worthy persons were much disturbed by the reappearance of the policy and practice of their own forefathers. The question of International Copyright became "pressing." The publishers of Chicago threatened to destroy the trade of the publishers of New York. The latter defended themselves reasonably by raising the price of their own reprints—an expedient that had on former occasions succeeded in raising similar products—but the sons of the West have not succumbed. The allowances made to the foreign author are of course threatened, and may be entirely withdrawn, but this final consequence has not yet been marked. At present the publishers of the older cities are content as to a privilege which at least they have made the discovery that the question of International Copyright has become "pressing." It is from these that the suggestion for its settlement must come, which Mr. Conant modestly explains. What is the proposed settlement favored by Mr. Conant? There is a preliminary suggestion of a conference, which is perfectly harmless, and might even bring about some degree of mutual education if it were adopted. But after compliments, business. The conference is an introduction to the gist of the whole matter, which is this, that the foreign author should be entitled to copyright in the United States on equal terms with the native-born citizen, provided always that his book is manufactured and published there by a citizen of the United
States within a very limited time after its first appearance. The book must be reprinted within a month or two months, and it must be reprinted by an American, to the exclusion of foreign publishers, who might otherwise be tempted to set up establishments of their own within the great republic. What is the meaning of these odd limitations? We must turn to Mr. Conant to explain them. We are, however, warned by him at the outset against a fruitless search after theories. Mr. Conant puts theories aside as useless people in wandering storms lost. We know what this means. When a man says he is an optimist, we are to understand nothing more than this, that he has never been at the pains, perhaps never felt the desire, to track any theory out so as to see how it squares with other theories and with facts of observation. A man can no more do without theories than without words, and the head of the "no theorist" is generally a jumble of theories half-corroborated and in delightful confusion. Mr. Conant is no exception to this rule. Every paragraph in his paper has its theory, and very frequently a bad one.

Mr. Conant begins his argument in favor of a limitation of the rights of English authors in the States by making the absolute adven-

tures that in his opinion copyright should be perpetual, like other kinds of property. The inconsistency of this opinion with the practical conclusion of Mr. Conant is obvi-

cous. If an author's right ought to be ex-

clusive and perpetual, it can not properly be limited. The whole includes the part—at least that used to be an axiom—but in this case the right to a part is denied where the right to the whole is admitted. The explanation seems to be that the citizens of the United States, thinking that the English publishers' promises, and immediate mortality must now to their decision. Mr. Conant is, however, good a patriot not to be able to justify the conclusions of his fellow-countrymen. I have already referred to the plea of the poverty of the original founders of the re-

public. "The men who cleared the forests and made broad the pathway of civilization" could not have got books at all if they had had to pay the authors of books for them, and the progress of American culture would have been retarded at least half a century in consequence. "The evil done [to the unpaid author] was comparatively small and transitory; the benefits realized [in American culture] were incalculable and permanent." This is the defense of the past, and an argument, based on the same theory, defends the recision of the citizens of the present. "Europe is constantly pouring upon the shores of America a mighty deluge of ignorance and superstition. We welcome here the poor, the out-

casts of every land." There is, however, something to be said against the apparently unbounded hospitality of this welcome. As ignorance comes from Europe, and is ac-

quired with gregariousness, as must ignorance come from Europe, and be received by us-

toanly. "There is a wide-spread feeling that the Old World, which contributes this mass of ignorance and superstition to our population, should also contribute to the alleviation of the resulting ill."

The process of compensation is somewhat rough. "It is certain that the author of the book in question would have been entitled to the right to republish his work in the United States. As an author's right is a personal right, and the sale of the book abroad is a sale of the book, not of the right, the only way of securing the right is to purchase it from the author." This is the argument that the author should be compensated.

The simple substance of Mr. Conant's argu-

ment is that the citizens of the United States, being accustomed to get their Eng-

lish reprint cheap, do not intend to consent to any legislation that would interfere with their being kept cheap; and they are not yet sufficiently indoctrinated with the higher morality—if it has any bearing on the question—to recognize any necessity for modifying this resolution. Why, then, should not things be left as they are? The bolthol and mill of cheapness could not be more easily realized than is it, and the sim-

ple citizen may even accept with resigna-

tion to the immediate cheapness of Chicago or St. Louis. But the New York publishers rebel against this. It may be right and proper that no legal claim to compensation should be allowed to an Eng-

lish author, but the native republican must be defended against the unprincipled piracy of his fellow-countrymen. The reprint of the "West" must be put down, and the way to do this is to give to the American pub-

lisher that which by consent from its English author, and to him only, the privilege of reprinting an English book. We shall then reconcile cheapness and decency. This is Mr. Conant's posi-

tion, and he advances it with great faith and with great assurance. The position is also supported by the mass of his countrymen. I have no such conviction. I have too great a respect for the intelligence of "our people" to believe that they will not see that they stand above the standard of the English publishers. The plan they would lose every guarantee for the maintenance of that cheapness they are now enj

oying. The reprints of Eng-

lish books have hitherto been cheap, but why have they been cheap? Because there is a copyright in the author, the extent of his claims becomes the author's wages, and the reprints are sold at the highest price. The price of a reprint will immediately become dependent on the position of the reprinter. The publication. George Eliot writes a novel, and it is once published in New York for five or seven shillings. It would not be publish-

ed at any higher price without some rival entering the field. The country of publish-

ers in the Atlantic cities may be great, but if a book firm in New York published David

Davids at five dollars, some other book firm, envious of their success, would bring out a

second edition at fifty or seventy-five cents. It would not be necessary to go to Chicago for a man of enterprise to accomplish this feat. But suppose Mr. Conant's plan adopted. David Davids is about to appear, and the

publisher who obtains the right of repub-

licating it from George Eliot may fix the price of anything he pleases without fear of rival issues. The condition on which cheapness depended is gone. The results of the game are changed. It may be said that no publisher would desert from the estab-

lished practice. Why not? There is a good deal of seriousness in the nature of the original plan, and whether it has been im-

proved upon in Patermoller Row or in Franklin Square, this primitive basis is apt to crop up with irresistible iteration. I am told that English publishers are devoted to the improvement of their fellow-countrymen, and this is perhaps the reason why they are so urgent of self-interest as they are, in the habitual disregard of the trading principles of small profits and quick returns. If American publishers have a better appreci-

ation of this matter, they stand alone among the traders of the republic. But the determi-

nation of the matter would not rest with the American publishers exclusively, or even principally. English writers are fairly bent about getting money, if they are not always sharp to keep it. An English writer having a valuable privilege to sell in the United States, would negotiate the best terms he could with a publisher in England. The publisher, forced to protect himself, would issue his book so as to bring back what he had paid out, and he would be able to realize the results of a comparatively small issue at a high price and a large issue at a low price. I do not suppose that the reprint of a novel—even supposing the scheme could be adopted—would at once go up from fifty to five dollars, but it would be gradu-

ally enhanced until the limit of profit was reached. The question does not depend upon probabilities. We have facts to guide us on this conclusion. How do the publishers of the United States act when they have the protection of copyright to prevent rival-


ry? Although the American book market is always full to repletion with reprints of English works, thus bringing down the standard price of books of first-class merit, yet the sum demanded for a volume of native origin is so high as it can be purchased. I take down from my shelves Thomas's 'Walden.' Is its published price in Boston less than that of 'Wild Life' in a Southern county? Here are Emerson's poems. Do they sell the native buyer more or less than we pay for a volume of Bocock? The publisher is everywhere a publisher; I have discovered any private acquaintance with the class, and I speak only from their public conduct. Judged by that text, I am warranted in concluding that if Mr. Co- nant's suggestions were adopted, the price of an English reprint would be enhanced to the limit of profitable return, and I do swear that "our people," bent on maintaining the cheapness to which they are accustomed, will not readily approve the proposed amendment.

Let us drop pretexts. Mr. Conant's view is very simple. I excuse myself by playing around his complicated reasoning, but I rely on the good, solid, sensible, dull, honest patriotism of the people of the United States—men akin to the stupendous gifts of our common people of the United Kingdom. When the time comes for International Copyright to be established, it will not be such as Mr. Conant contemplates. Hitherto, a few persons across the Atlantic have played with it. Henry Clay, one of the last men to travel the world, took it up forty years since, but nothing came of it. Mr. Everett nibbled at it. A Mr. Baldwin—unknown to me—seems to have brought a bill into Congress in 1835. There was a committee in 1873, which came to the conclusion, all ready quoted, that "the subject was in a chafe." Mr. Conant's comments on the suggestions made to this committee show how necessary it is to draw up any prac- tical agreement on the matter. Mr. Badian recommended that the foreign author should have the same rights as the native author, if his country accorded reciprocal rights to American citizens. This is exactly an inter- national proposal, and Mr. Conant characterizes it as "unanimously absurd" but then Mr. Badian has said the world. He can lock on much more than one side of things, and house regards as simple sense what Mr. Conant so pretentiously dismisses. Mr. Mor- ton recommended that any one should be entitled to reprint foreign books on condition of paying ten per cent. on the wholesale price to the foreign author. This is "equally indefensible." Mr. Conant is so intimately associated with publishing as it exists on the other side of the Atlantic, that he does not seem to have contemplated the possibility of a general law of copyright, based on the principle of open publication, subject to a royalty. He does not bring to the idea of International Copyright any peculiar tautness or difficulty, but it is hard to see why the rest of the world should not also have freedom of copyright, that will enable them to retain control of foreign books in this market. He virtually speaks of restricting to slavery practice in order to attain this end, and as- sumes that interested motives only are at the bottom of their offer of American copyright to British authors. Even if this were the case, the question of motives is not under discussion. The only subject for inquiry is this, Is the proposed scheme fair, just, and practicable? But "C. is mistaken in every one of his assumptions, and betraying, allow me to say, an ignorance of the history of the controversy, even of what has been taken place in England, which is amounting in one who undertakes to write upon it. If 'C.' has examined that history with even ordinary care, he would have seen that the pressure for international copyright, as well as the most earnest recognition of its importance, has been on the part of British authors and publishers. Take, for instance, the report of the Royal Commission appointed under the authority of the Queen, in 1874.
national copyright with this country, and I will cite a recent instance of individual "presumption" from a British author, who was himself a member of the Royal Commission. As the letter was a private communication the writer's name is withheld: 

--- October 11, 1878

Messrs. Harper & Brothers,


Consequence:

You will have seen that I have taken a great interest in the copyright question; I believe one of the great difficulties hitherto has been that our English publishers have endeavored to obtain insurable privileges in America. It is simply an author's question; and if you could get your government to pass a bill recognizing the author's right, and no more, of course the result would be that you would negotiate directly with the author, or that he, if he did not avail himself of the form of publication and publication within, say, twelve months, would lose his American right altogether.

The foregoing letter was received by Harper & Brothers about the 1st of November, 1878. The suggestions of the writer were carefully considered by them, and the result of their deliberations was embodied a few days later in a note to the Secretary of State, Mr. Evarts, in which they suggested the appointment of an International Convention to mature the terms of a copyright treaty between the United States and Great Britain. It is in that note that they enclosed to recall the assurance given them by Sir Edward Thornton in 1877 that there was no discrimination on the part of American publishers to pay British authors the same as they do American authors, and that American publishers simply wished to assure themselves that they should have the privilege of printing and publishing the books of British authors in this country. The writer's proposition, you will observe, does not consider the question of abstract rights; and the Harper's, accordingly, in their letter to Mr. Evarts, admitted that the scheme involved a violation of those rights, while it secured practical advantages to English authors.

In addition to the testimony of such men as John Blackwood, John Murray, P. R. Dally, T. H. Fawcett, and many others, that the question of international copyright was regulated in England as a "presumption" into, I received your solicitation to prepare an article on the subject for your magazine. Editors do not, as a rule, ask for articles upon don't-subjects; and I can not help wondering how a matter that was so lively in March could be so dead in May. What has caused this sudden decay of interest? The reason lies in a muddle. British publishers are evidently unwilling that British authors should obtain any privileges in the United States in which the former do not obtain. British authors generally concede the position of American publishers to be founded in reason and justice. This acknowledgment is not new on their part. As long ago as 1879, in a response to a forcible exposition of the American view which appeared in the columns of the London Press, a very significant memorial, signed by leading British authors, was published in England, from which I quote the following paragraphs:

"...We understand that the demands of publishers in this country have been the most formidable obstacles to the negotiation of a copyright convention. We are of opinion that the large number of our publishers in America copyright is quite independent of the just claims of British authors, and that we may fairly admit that recognition of the former. We think it would be a grave error if the settlement of claims was retarded or rendered impossible in consequence of two classes of claims, which, in essence, are wholly distinct, if not antagonistic, being regarded by negotiators representing this country as identical and inexorable.

Americans distinguish between the author, as producing the ideas, and the publisher, as producing the material vehicle by which these ideas are conveyed to readers. They admit the claim of the British author to be paid by them for his brains-work. The claim of the British book manufacturer to a monopoly of his book market they do not admit. To give the British author a copyright is simply to agree that the American publisher shall pay him for work done. To give the British publisher a copyright is to open the American market to him on terms which prevent the American publisher from competing.

"We would point out that the argument of the Americans is that such an arrangement would not be free trade, but the negation of free trade, and merely noticing their further argument that while their protective system makes the price of their books substantially free competition with the British book manufacturer would be fatal to the American book manufacturer, it is clear that the Americans have strong reasons for believing that a genuine copyright of "C. O." character is necessary as it has always been a position of the British author to share in the copyright which they are willing to grant to the British author.

"We venture to suggest, therefore, that by responding to the copyright feeling recently expressed by Americans on the subject, and adequately appreciating the force of their reason for making the above distinction, negotiations to remove to secure a copyright on the conditions they specify..."

This memorial was signed by the following gentlemen:

Herbert Spencer.
Sir John Lubbock.
Andrew Edgar, LL.D.
Edwin Peck.
Thomas H. Inlay.
Georgia Bechtel, Esq.
Jas. Matchette.
Sir John Stuart Mill.
James Paget.
Thomas Hogbin.
A. J. Prout.
H. G. Lewes.
F. S. A.
T. Carlyle.
"C. O."
John Eunice.
James D. Hooker.
William Stanhope.
Joseph Delmon Hooker.
G. F. Martineau.
G. C. Parkinson.
Stevens Brooks (Ed. Prank.
Rev. Henry Jayne.
John Tuck.
Rev. Edmund Henry Join.
Rev. Edward Henry Tom Hood.
Henry Biggins.
John Dwyer.
William J. Black.
Rev. James Bailey.
Philomena Bailey.
Rev. C. Taylor.
Edward Dring.
Rev. James Cates.
Henry Lowther.
Blanchard Jerold.
John Gilbert.
Rev. Justin McCarthy.
J. B. Sydney Silas.
Rev. George Augustus Salus.
J. B. Leister War.
Edward Yates.
Robert Buchanan.
Shields Ames.
Emerson Wilson.

It is quite impossible to conceive of a more cordial approval of the American view than is given in this memorial. It also dispenses with the utterly unsound and unfounded assumption that the American propositions is of recent origin, or the result of a business point, and leaves "C. O. " elaborately vague (as he himself styles his system) floating in the winds of the firm's paradise.

I wish to make one point more. In the course of his reply, "C. O." asserts that "any author who has made his mark in England may get from the American publisher who repays his books such royalties as the latter may consent to allow him, and if these allowances are threatened, he has no one to be more seriously endanger the safety of the country?" This must have been written without consultation with British authors, whose interest in this country are "seriously endangered" by such unauthorized reprint that they or American publishers from paying as large sums as formerly for priority. There is not a British author I think, who finds his receipts from America diminish, who will not admit that the question is decided "presuming" although British publishers may view his embarrassment with bemoaning needlessness.
The case, therefore, stands just here: American publishers, at the "proving" solicitation of British authors, proffer a practical scheme of international copyright, by which, as the Harper said in a recent letter to the London Times, they propose to make obligatory and legally binding what has been for years heretofore a voluntary practice under our law of "trade courtesy." The scheme is hailed with acclaimation by eminent British authors, who see in it nothing to which they object, or which they wish to change. But the British publishers, who for years have been crying out against "Yankee pirates," stand coldly aloof, grumbling: "I don't see what I am going to make by this arrangement. If I can't put my fingers in this international copyright pie, I would rather things should be left as they are." This is the keynote of "C4's" rejection. He does not claim that the American scheme would be unjust to British authors, while the whole drift of his reply is to the effect that any scheme must be shorn which does not include provisions for the benefit of British publishers.

In conclusion, allow me to say that "C4" had no right whatever to assume that I wrote as the special exponent of the views of American publishers. By so doing he changes me with false pretense, as I expressly claimed to set forth the views held by a large proportion of American readers. But perhaps I ought to feel complimented, as a party to a controversy, that my opponent, instead of meeting my arguments and statements fairly, should resort to pretexts, and to aspersions unwarranted by anything in my article or by the conditions of the controversy.

B. B. CURTIS.