

Mr. Pearsall Smith:

My dear Sir:

I have read with interest your plan for International Copyright and the special comments thereon by different parties in the extracted portion of the XIXth Century accompanying your letter.

I have been a careful student of the subject of copyright, for many years, from the three points of view in which it presents itself, viz: that of the lawyer, the author and the Publisher. As a lawyer, I have been amazed at the ignorance of authors and publishers of a subject of which they talk and write so much, as well as at the narrowness and illogicality of the courts and the profession in dealing with the author's right. As an author I have been amused at the coolness with which the publisher regards the author as a mere incident of his own ^{business} ~~profits~~ and the supreme confidence with which he talks of the equitable character of a specific percentage of ^{the} retail price to ~~the~~ ^{relation} ~~prof~~ his own profits. As a publisher I have been surprised at the ignorance of authors as to the rights which they actually possess, ~~as well as~~ the character and source of their ~~own~~ wrongs and the curious unqueness of their ideas as to the remedy. I have taken no part in the proceedings of the author's Copyright League simply because I was invited to give my influence to promote a project which I regarded as thoroughly impracticable. At the same time, I have not cared to engage in the

general discussion of the subject which has been going on because it seemed useless to attempt to combat ^{such} generally received errors and folly to argue from false premises, as well as ~~from~~ ^{distinct} the fact that I was unable to devise any ~~of a specific~~ ^{remedy} which seemed to me applicable to the disease.

As instances of ~~the~~ the curious misapprehension which I have noted I might cite the following:

- 1- That there is some mystical relation between the ten percent ^{of the} retail price of a book and the author's copyright — or between the publisher's fair share of profits and the author's. There is no such relation: the equitable ratio of profit varies infinitely according to expense, workmanship, advertising, &c.
- 2- The idea that ~~intentional~~ the granting of copyright ~~to~~ to foreign authors is somehow in this country, is somehow or other inimical to American manufacture of books, while on the contrary it ~~is~~ ^{would be} stringently protective of such manufacture.
- 3- The notion, as asserted by Mr. Clemens recently in the Princeton Review, that Canadian Copyright gives English protection. It is good for Canada only.
- 4- The prevailing idea that a book can be ~~and~~ in fact be written on English soil to be copyrighted in England. No such condition

is required. It is only true of Canadian copyright
which is not good in England -

5 - The notion that by collaboration between an
American and English author copyright of
the joint work may be secured. For instance
Mrs. Cliphart and Mr. Aldrich in "A Second Love".
The fact being that the work of the American loses
all protection by the resort to a silly and shabby
low fraud.

6 - The idea that England occupies the pinnacle of
righteousness in this behalf, while the truth is she is
the most selfish of thieves, her system being from
first to last, intended for the support of the pub-
lisher's monopoly instead of the author's rights. Indeed,
the great defects of our own system have sprung
from a too servile imitation of hers. In every respect
save one, the protection afforded to property in intellec-
tual products, inventions, books, plays, and works of arti-
stical art, afforded by American law is better than
that afforded by English law. England has system-
atically subordinated the rights of the inventor and
intellectual producer to the interests of the man-
ufacturer and tradesman and copied almost every
serious defect of our law has been borrowed
from hers. She is entitled to this credit only; she allowed
her publishers to protect their foreign reprints well against
competition despite foreign authorship. That is all. So far
as the foreign author is concerned she leaves him open to pe-

6 - The idea that any one can put a copyright notice
on a stolen imitation of it on a book with impunity.
If our Copyright League would address itself to the
enforcement of the law we have and a promulga-
tion of accurate knowledge of its real character,
it would accomplish a great deal more
good than it is likely to do with a Washington
lobby and agitation along a false line.

10

entire hardship, unless he has an English publisher. As an instance, I might cite the fact that one of my own works has been ~~re-published~~ ^{there} rehashed and mutilated and republished in another's name. It is not well for England to assume such magnificence ~~has~~ airs over her ~~as~~ British virtue and American depravity.

8 - The view of Mr. Matthew Arnold that "the average man", has not "delicacy" enough to give to the author and artist his due, is worthy only of a man like Mr. Arnold whose sense of his own perfection blinds him to the universal sense of justice from which the law which ~~we~~ constitutes the safeguard of civilization springs. That he should have a poor appreciation of the "average" American who paid ^{great sums} ~~immense~~ to have him revise a civilization he is incapable of appreciating, is hardly to be wondered at. The truth is that the determination to grant international copyright does not spring from any lack of "delicacy" on the part of the "average man" in America, ~~but from a~~ ^{an} ~~desire~~ ^{desire} regard for the author's rights, that one in a thousand can be found who are not willing to accord the right of property to the results of intellectual labor if that can be done ~~and~~ without paying ~~from~~ ^{from} five to ten times as much to a trade monopoly. The "average man" is not fool enough, however, not to draw the distinction between brains

(A) The American public would very gladly pay a reasonable royalty to the British author if it could be separated and distinguished from a bonus to a publishing monopoly. The "average man" whom Mr Arnold despises with such pharisaical intensity would much more readily do justice pecuniary justice to the British author than he ~~is~~ to an American idea, ideas or society. Not one in a thousand of those who buy a reprint on the train would object to paying five or ten cents more to the author, but they do dislike to have the ^{his} author's needs made the the instrument of prizing a dollar out of them for the publisher in order to get a dime for the author.

and binding. He does not and he ought not to admit the right of the author to compel him to buy ~~gold~~ gilding and marbles, under the plea of protecting an author's ~~rights~~ property in his own labor. He knows that of the difference between a cheap and a dear edition only a small percentage goes into the author's pocket; the rest is merely a bonus given by law to ~~the publisher~~ encourage the publisher's monopoly. This is what the average man ~~finds~~ tests against. (Insert @)

9- The idea that the intellectual advantage is on the side of America under the present system, is exceedingly questionable. The amount of "rot" which is heaped upon us through the medium of English reprints is simply enormous. Much of it is not only horribly written but it is loaded down with notions utterly subversive of the best elements of our civilization. It is a pauper literature - the result of pauper labor, imbued with the pauper spirit and inculcating social and class distinctions the importation of which has been of the greatest harm to our people and institutions. Every one of these also cuts out the opportunity for an American book inculcating American ideas and illustrating and strengthening Amer =

in life. The idea that Anglo-Jaxon
thought must have an English mint =
mark ^{or that it is desirable that it should} is simply absurd. It will do for
snobs and "dudes", but is unworthy of a
people who in the past hundred years have given
England more valuable ideas than we have
ever inherited from her. In law, in politics and
in all that constitutes the mechanism of civ-
ilization we have been ~~her~~ teacher for a
generation and it is unbecoming in us
longer to submit to the insufferable arro-
gance of her men of letters. She has no right
to talk of robbery of the ^{British} author because on
this side of the water we decline to ~~allow~~
~~the~~ ~~to~~ attract the British publisher to the
British author and instead of a single
and sufficient royalty pay three or
four.

With these views, I am prepared to accept and endorse most heartily the plan which you propose both for international and for domestic copyright, as far as it tends to the separation of the author's right from the publisher's monopoly. It is most unquestionably a ~~desirable~~ a step in the right direction. As to the methods by which you propose to accomplish this you will excuse me from giving an opinion at this time. I have not yet had opportunity to study the operation of the plan & I would desire to do so as a ^{practical} question of law and legislation. Certain objections seem to me at this time very serious if not insuperable.

- 1 - It is by no means a fact that ten percent ^{in the retail price} is a fair proportion of the profits to the author. Most of my books have been published on the half-profit plan with the ordinary discounts to the trade not exceeding "four and five off." Under this arrangement I have netted much more than such a percent.
- 2 - It is not true that what the author would lose in amount would necessarily be made up in ~~so~~ numbers. That is true only of some books.
- 3 - The plan deprives the author of all control over his own work. It is in fact a forced sale of his right - an admission that government may take what is

his at a fixed rate, without regard to its value. This seems to me even a more generous kind of robbery than the one it is designed to cure. It looks to me like cutting an author's throat for the sake of the craft.

I am by no means sure, however, that this defect could not be ~~remedied~~ ^{amended} by changes not seriously affecting the plan. I ~~sugg~~ would ~~inquire~~ ^{inquire} ~~an~~ ^{an} ~~inquire~~ ^{inquire} for instance, whether (1) the ratio of royalty to retail price is the best ~~method~~ ^{standard} of determining the author's right? (2) whether the author ought not to be given some control over the character of the editions ^{to be} published?

In regard to these ^{suggestions} why not permit the author to regulate the ^{character} price of editions of his work for a certain period at least, and allow him to fix the price of his own stamps, requiring him ^{only} to furnish them at a regular price to all publishers who choose to compete in editions of the ^{kind} ~~price~~ prescribed? Then an author could use his own judgment like an inventor in a Trademark. One might ~~say~~ ^{wish} ~~to~~ ^{to} authorize only a cloth edition ^{of a certain} for a certain time; another might think it profitable to authorize cheap editions at once. This would permit competition between manufacturers of the same article, and not invite the butchery of the author in the interest of a vulgar world. Again, suppose a work to be nicely illustrated and its value to depend largely on that,

Ought a man to be permitted to photo-lithograph, ~~use~~ and spoil both author and artist's reputation at a fixed percentage on his ^{own} actual price?

~~work~~ Another objection is that one author's ~~may~~ does and ought to command a better price and reader sale than another's? Ought not such an author's rate of payment to be greater than that accorded to one whose work does not ~~command~~ ~~so~~ ~~near~~ ~~good~~ ~~com-~~ ~~mand~~ ~~so~~ ~~readily~~ a sale? Instead of compelling an author to accept a fixed rate why not allow him to say "I will not sell my ~~stamp~~ under ~~two~~ ~~or~~ fifty or thirty or fifteen cents, if he chooses, for one two, five or ten years, if he chooses, and let the trade compete on the production ^{of the book} ~~at~~ that royalty? This makes ^{the author} ~~him~~ a free agent, and not a ward in chancery. Or, to go still further along the same line of separating author from publisher, and securing the rights of the former and leaving competition free among the trade,

why not allow any author to wholesale his
stamps? Surely ^{he} an author ought to be willing
to sell 10,000 of his copies of his book — that
is his right in 10,000 ^{copies} at a lower rate
than the right in 1000 — or 100?

You will see I do not mean to dis-
approve your idea. It is a most ex-
cellent movement in the right direc-
tion. But I am not at all sure
that a fixed scale ^{would} ~~not~~ do harm
in the very direction and to the very
class it is designed to benefit. Authors
ought not to be treated as infants. What
they require is simply for the law to take
the publisher off their backs and leave them
at liberty to dispose of their own wares
without having to find a market for
his. I am inclined to think, with such in-
vestigation as I can now give the sub-
ject, that a sliding ^{of royalty} scale to be fixed
by the author ^{but whose fixed rate to all} in his publication, would
benefit manufacturers.

make the idea entirely feasible and
~~should~~ meet the general approval of
authors, ~~and~~ consumers, purchasers,
and dealers; As to the publishers, I do not
think they will ever willingly release the
grip they have on the author and the
buyer, ~~both~~ ^{either} in this country ~~and~~ ^{or in} England,
not because they lack "delicacy" but for
the same reason Mr. Arnold, ^{without}
any "delicacy" visible to the naked eye,
assigns for not assenting to your plan the
proposed plan, to wit, that he thinks
he is making more money as things
already stand. In fact this is not a matter
of "delicacy" at all but requiring the most
robust common sense and the author's
right to profit from his work outside
of and irrespective of the publisher's sa-
quity, success or honesty, lies at the
bottom of a just, equitable and advantageous
solution of the copyright problem both at home
and abroad.

My dear Petrus:

You hit my feelings exactly. I have been going up and down the country in a dozen states since I saw you. At least one third of the Republicans I meet ^{admit} ~~say plainly~~ that they do not think Blaine ~~cannot~~ be elected. Yet we are such a lot of stork crowds that not one in ten dare oppose him. Everyone seems to think ~~the man from~~ ^{the man from} ~~has a most~~ ^{gauge on the} ~~place~~ ^{reputation} and if he don't count it himself ~~has~~ ^{is} an ~~awful~~ ^{awful} ~~and~~ ^{and} another ~~rather~~ ^{rather} by the ~~Buffalo~~ ^{Buffalo} fat man from Buffalo, has an undoubted right to waste public assign and transfer his ~~been~~

his charges

to whomsoever he may choose ~~to~~
~~as his political heir~~ ~~that~~ ~~balls~~ ~~was~~ ~~seen~~ ~~to~~
~~his~~ ~~benefit~~ ~~they~~ ~~think~~ ~~he~~ ~~has~~ ~~the~~

party in his pocket and the pack
is not half full. The faithful
have now taken up the argument
that the surest way to win is to nomi-
nate a man who has been de-
feated by the vast greatest number
of times. They say Harrison and Jack-
son had been defeated and that
Clay would have won in 1840
or in 1848, forgetting that
"Jeppe" and the "Log Cabin"
elected Harrison and Miss Buren
voted and Van Buren passed
Taylor's success.

That Jackson had the highest number of electoral as well as popular votes in 1824 and only emphasized his ^{former} success in 1828.

So too they say that Blaine got more votes in New York in 1884 than Parfield in 1880; yet Cleveland did not get as many as Hancock, but like Mercator's ~~would~~ it was enough.

quite forgetful of the increase of population, which is ^{considerably} greater than the increase of the vote and the important fact that Mr. Blaine's opponent who reversed the state of things in New York will again be the Democratic candidate.

There is no doubt that Cleveland is stronger, and Blaine weaker than in 1884, for the following reasons:

1- Mr. Blaine has done but three things

to affect his status as a candidate
since the ~~end of the~~ ~~con~~ his defeat, ~~is~~

There are (1) his augusta speech made
immediately afterwards and arraigning the Dem-
ocratic party for suppression of the Negro
vote in the south. This was a subject on
which he had been significantly silent
during the campaign — so much so that
the pertinent inquiry of an opposition
journal struck him in the face like
a confusion of judgement, "If Mr
Blaine thinks this matter so important
why did he wait till after the elec-
tion before discussing it?"

(2) His second significant act was the
withdrawal of his ~~suit~~ ^{for defamatory} against the In-
dianapolis News, immediately after his
defeat upon the alleged ground that
he could not have a fair trial as

secure an impartial jury or have a fair trial in the Federal Court of the District of Indiana, in face of the fact that the Judge, Clerk and Marshal of that Court were all Republicans.

As the Editor of a prominent daily paper remarked at the time, "If Mr. Blaine is ever a candidate again he will ^{assuredly} ~~certainly~~ have a chance to see if the Courts and juries of every other state in the Union will afford any better opportunity for repairing the reputation he declared upon oath had been so seriously injured by the publication whose truth he declared to ~~be true~~ ^{submit to legal adjudication in Indiana!}

for spinning a good thing shows
in brilliant colors. There was no
sort of need for him to take
the ~~absurd~~ ^{absurd} ground that tobacco
is "a ~~part~~ ^{part} of the necessities of life".

Only think of it, the Methodist Church
~~forbids~~ ^{prohibits} any one from entering ~~the~~
or its travelling connection who
uses tobacco in any form, yet
there is not a livelier set of men
on earth than those ~~same~~ ^{same} ~~pir-~~
almost every one of them a Republican too.
crit = riders. If he had said
the internal revenue law promoted
monopoly, ~~and~~ crushed out the

small dealer and prevented the
farmer from manufacturing
his own production and so
securing a profit on his winter-
labor, his argument would
have been much stronger
and at the same time have
made him no enemies. This short-
sighted inadvortence has strengthened
very greatly the opposition of the
temperance element — of which
you need seek no clearer proof
than the sentiment of the

(3) - His third important act was the reply to Mr. Cleveland's free-Trade Message. In regard to this, the suspicion is daily ~~gaining~~ gaining strength that this Message was intended very largely to secure Mr. Blaine's nomination. It is ~~to~~ believed that Mr. Cleveland and his advisers are at length unanimous upon one thing - that if Blaine's nomination can be secured, Cleveland's election is assured. As a consequence there are those who believe that the little sensation was quietly planned beforehand with the full knowledge of the President or his friends. Even in this, however, Mr. Blaine's ~~is~~ amazing capacity =

class I have referred to. Four
years ago almost all of them
were among his warmest
supporters. Now, a large propor-
tion of them are opponents or doubters.

It is curious how some little
thing always ruins Blaine's chances.
Think of it; his ill-advised opposi-
tion to the force bill spoiled his chances
in 1876: Bob, Ingersoll's deification
speech has been a millstone about
his neck ever since: the subterfuge
of "the white-plumed knight" served
only to bring out more clearly
that in the days "when drums beat

and hearts bent"; his plume was seen
only as far at the rear as he
could get; ^{that} and, like the Buffalo
pachyderm he did his fighting by
swoop: the stroke (?) that it
was thought would bring sympathy
for him, brought only distrust:
the attempt to ~~use~~ use the clergy as
an instrument in his favor, brought
Burchard and his fatal alliteration;
the feast which was meant to see
the sinners of war re-
sulted in hanging Jay Gould
& Co, about his neck; and

now the ~~man~~ jealous miss =
hence he manifested towards
Gen. Logan while they stood on
the same ticket is bearing fruit
in the indifference if not hostility
of those who knew and loved
the worthy ~~man~~ ^{checked} but great-
hearted leader.

Of course, the gamblers all
want him nominated and are pro-
fessing to offer to bet that he will be
and will be elected. It is easy
to see why. They know there is no

reasonable chance of his election
and the hope of that fraternity
lies always in the heart of the
partisan. They know that ~~as soon~~
~~as~~ if he should be nominated his
supporters would be compelled
to back their opinions with their
money or submit to the fears
of the multitude. Then would
come their opportunity and we
would have the country more
thoroughly worked than ever
before by ~~the~~ ^{the} sporting gentry.