THE CENSORSHIP OF STAGE PLAYS

If the importance of a Parliamentary Commission is to be judged by possible results, the Report of the Joint Committee on the Stage Plays Censorship may be considered as a serious one; for if its suggestions are to be carried into statutory existence the outlook of all persons—including the public—interested in matters of dramatic amusement may be very different from the present.

The Committee was composed of five members of the Commons and five of the Lords. They began examining witnesses on the 29th of July, and had twelve sittings, during which time they examined forty-nine witnesses, including the Speaker, the Bishop of Southwark (suggested by the Archbishop of Canterbury), and Mr. Snead-Cox (suggested by the Archbishop of Westminster on behalf of Catholics). The main report is in four broad divisions: (*a*) Origin of the present Control over Theatres and Stage Plays and of Music Halls, (*b*) the Censorship, (*c*) Proposals with respect to the Licensing of Plays, (*d*) the Licensing of Music Halls.

The first of these (*a*) is a brief historical summary almost adequate to the subject of the report. Under the second heading (*b*) the following suggestions are made:

(1) The public interest requires that theatrical performances should be regulated by special laws.

(2) The producers of plays should have access prior to their production to a public authority, which should be empowered to license plays as suitable for performance.

(3) In view of the danger that the official control over plays before their production may hinder the question of a great and serious national drama, and of the grave injury that such hindrance would do to the development of thought and of art, we conclude that the licensing authority, which we desire to see maintained, should not have power to impose a veto on the production of plays.

(4) The public authority should be empowered by a summary process to suspend the performance of unlicensed plays which appear to be of an improper character, and that, where it is confirmed that they are of such a character, the performances should be liable to penalties.

(5) The authority to decide on the propriety of the future performance of an unlicensed play should be the courts of law in cases where indecency is alleged, and in other cases a mixed committee of the Privy Council.

Under the third heading (*c*) the Lord Chamberlain should remain the Licenser of Plays, his reasons for refusing license being limited to the following causes: (1) Indecency, (2) Offensive Personalities, (3) representing invidiously a living person or one recently deceased, (4) violation of the sentiment of religious reverence, (5) conducing to crime or vice, (6) impairing friendly relations with any foreign Power, (7) causing a breach of the peace.

Then follows a startling suggestion which must be read and studied to be even understood. (The italics are my own.)

> ***It shall be optional to submit a play for license, and legal to perform an unlicensed play whether it has been submitted or not.***

The meaning is made somewhat clearer by the paragraphs which follow, showing how in case of offence both the manager and the author may be punished and the process and measure of punishment allowable, all being *ex post facto*. The last of these explanatory paragraphs runs:

> ***The measure of immunity conferred by the licensing of a play should attach only to the text passed by the licenser.***

Under the fourth head (*d*) the recommendation is a single license for theatres and music halls, giving them equal freedom to give whatever class of entertainment they may choose. That dramatic performances (including songs) in all cases shall be licensed by the play licenser. That for the metropolis the London County Council should deal with the licenses of theatres as well as of music halls (as at present), and that smoking should be in both theatre and music hall at the option of the management.

There are various corollaries in the way of suggestion in case a Bill should follow the Commission.

For a sufficient understanding of the report before us it is necessary to make a comprehensive survey, however brief, of the history of statutory control of the theatre and all connected with it.

The direct control of theatres began with 'Walpole's Act' of 1737 (10 George II, cap. 28). Up to this time such regulations as affected the theatre, its literature and its working, belonged to the region of the Privy Council and the Department of the Lord Chamberlain; with, of course, such matters as affected the general good of the State—especially bearing on literature and the ordinary discipline of life. Incidentally, there were occasional points of contact with the Star Chamber and the Vagrant Laws, beginning with the 'Statute of Labourers,' A.D. 1349, and lasting in this connexion down to 1822. The im-

mediate control over players enacted in the Act of 1737 replaced in this respect the Act of Anne (12 Anne, cap. 23), entitled 'An Act for Reducing the Laws relating to Rogues, Vagabonds, Sturdy Beggars and Vagrants, and sending them whither they ought to be sent.'

The gradual growth and importance of the legislation begun with the Statute of Labourers brought all travelling persons into the domain of law, as witness 14 Elizabeth, cap. 5 (1572), which included in the legal net, unless there was proof of the contrary, 'Roges vagabonds and sturdie beggars.' 'Common players in enterludes . . . not belonging to any baron of this realme, or towardes any other honorable personage of greater degree' . . . which . . . 'shall wander abroad and have not licence of two Justices. . . .' This legislation continued—the penalties increasing in severity—down to 1603, when the Act 1 James I, cap. 7, abolished the privileges of nobles to give licenses, and so centred such privilege in the person of the Lord Chamberlain as an officer of the King. All this legislation concerned only the players; the theatre as such did not appear in the Statute Book till brought there by Walpole's Act in 1737, which, with an enlargement in 1787 empowering local justices to give occasional temporary licenses, regulated all matters of theatre, player, and play down to 1843, when was passed the Act (6 & 7 Vict. cap. 68) which regulates these matters of theatre and play down to this day.

Music halls—as we understand them—came into official recognition in 1751 under the Act 25 George II, cap. 36, entitled 'An Act for the better preventing Thefts and Robberies and for regulating Places of Public Entertainment and punishing Persons keeping Disorderly Houses.' This Act is, together with Building and General Acts, the controlling power of the present.

The Parliamentary Commissions held on these subjects were those of 1832, 1853, 1866, 1892, and that of 1909, whose report is before us. The first of these was to inquire into the laws affecting dramatic literature; the second into places of public entertainment; and the third and fourth were to inquire into the operation of the Acts of Parliament for Licensing and Regulating Theatres and Music halls . . . and to report any alterations which might appear desirable.

It is a pity that the Home Office representative sent to the last Commission (Mr. W. P. Byrne, C.B.) said (Question 6) of the report of 1832: 'The greater part of that report is irrelevant to the present inquiry.' For it was mainly on that report that not only the Act of 1843 was passed, but also the Act 3 William IV, cap. 15, which is practically the Charter of British Dramatists. Inasmuch as the Act of 1737

gave the first statutory authority for regulating theatres, and as it had existed for nearly a century, an inquiry bearing on theatre laws and facts was of transcendent importance. In this connexion — the evidence of Mr. Byrne — it may be as well to bear in mind that the witness also made — of course unintentionally—a misleading statement regarding the Theatres Act of 1843. Regarding this, he said this Act 'was not preceded by any agitation which made itself substantially felt in Parliament,' and goes on to infer that it arose from the Home Secretary of the day laying before Parliament 'a representation which was a communication made to him by the Society of Dramatic Authors and praying for the enforcement of the law both as to the licensing of theatres and as to the censorship, and praying especially for the entire separation of the theatre from the tavern, the public-house.' It would almost seem as if the witness, though evidently familiar with the finding of the Commission of 1832, was not well acquainted with the evidence on which it was founded—even if he had read it *in extenso*. For in the bulk of evidence given at that Commission was the rehearsal of some facts which were not specially brought to the notice of the last Commission or its predecessors in 1866 and 1892. For instance, it might have been useful to show the origin of certain powers or customs as given in the evidence of the then Controller of the Lord Chamberlain's Department, Mr. Thomas Baucott Mash, who had been in that Department for forty-three years, so that his recollection of the practice of the Department naturally went back to about fifty years after the passing of Walpole's Act. In that report was also the evidence of Mr. John Payne Collier, one of the great historians of the British stage, who had been for a time deputy for Mr. George Colman, then the Examiner of Plays; and of many celebrated actors, such as Charles Kemble, Edmund Kean, William Dowton, W. C. Macready, Charles Mathews (the elder, who had been then on the stage for thirty-seven years), George Bartley, and T. P. Cooke.

There was the evidence also of the popular dramatists of that period—Douglas Jerrold, W. T. Moncrieff (author of some two hundred plays), John Poole (author of *Paul Pry*), R. B. Peake (with forty plays to his credit), J. R. Planché (with seventy-three), Thomas Morton and James Kenny (both representatives of their time).

It was almost necessary that some such evidence should have been quoted, for some of the official witnesses of the late Commission were actually in error with regard to facts. For instance, Mr. Byrne said (Question 137): 'I think that all the Committees that have reported on the matter have suggested that the censorship should be extended everywhere, and to all classes of enter-

tainments and to all parts of the country.' This is not correct, as may be easily ascertained by reading the reports, covering less than a score of pages altogether. The Report of 1832 consists of eight clauses, of which in only three (Clauses 2, 5, 8) is censorship mentioned; Clause 8 (largely a corollary of Clause 7, which deals with authors' play-rights) has the one possible allusion to the extension of censorship: 'It is probable that the ordinary consequences of competition, freed from the possibility of licentiousness by the confirmed control and authority of the Chamberlain . . .' As the statement was made by the Home Office representative in answer to a question as to whether the censorship extended to Ireland, such an answer was quite misleading. Clause 12 of the Act of 1843, which regulates the examination of plays, says: 'Intended to be produced . . . and acted for hire at any theatre in *Great Britain*, shall be sent,' &c. (The italics are used in the Act.)

In his evidence, the Clerk of the London County Council—most learned and courteous of officials—in answer to a question (5830) whether the powers which the London County Council now exercise with regard to structure were not at one time possessed by the Lord Chamberlain and exercised by him, answered: 'I think not. The structural powers of the Council are under special Acts of Parliament passed at the instance of the late Metropolitan Board of Works.' Here there is a certain confusion, due, of course, to the fact that the London County Council is itself a comparatively recent creation, which only values authorities bearing on its own duties. The question alluded to general powers, without reference to their origin; but the answer alluded to statutory powers only, the witness manifestly having in his mind the 'Metropolis Management and Building Act Amendment Act' of 1878. Whereas the statutory power was given to the Lord Chamberlain to license, and as no restrictions were given he had power of all kinds under the Acts of 1737 and 1843. A power given, leaving it open to the recipient to use his own judgment as to how and when he should exercise that power, is really a larger power than if specific instructions had been given for its use.

I may say from my own experience that the Lord Chamberlain had and used to exercise those or similar powers. Before the licensing day came round each year Sir Spencer Ponsonby-Fane used to attend with certain officials, including an architect attached to the Lord Chamberlain's Department, and make survey of the whole structure.

Proof was given at the Commission of 1866 that 'the earliest evidence of a compulsory survey of a theatre by the Lord Chamberlain appears to be that of the Pantheon in 1812.' And again:

'In the autumn of 1855 the first annual inspection took place of the whole of the metropolitan theatres. It was made by an officer of the Lord Chamberlain's Department, assisted by a surveyor.'

There is a form of error, not altogether strange, in the reports of both 1866 and 1892, and in many cases made by witnesses who should have known better. That is, of speaking of a theatre as 'a place of public entertainment.' In law 'a place of entertainment' is a public-house. The phrase is still maintained in the common advertisement or designation of such places: 'Entertainment for man and beast.' The phrase which groups in law a 'theatre' and a 'place of entertainment' is a 'place of public resort.'

It may seem trivial to place stress on this error, but if *ipsissima verba* of the present report be carried into law it is necessary to be exact. In page xvii of the report before us is the following recommendation:

> We are of opinion that all *places of entertainment* holding the new single licence should be required to obtain a Justice's licence if it is proposed to sell intoxicants upon the premises, but that existing *theatres* which now hold an excise licence should be entitled . . . to continue to sell under that licence.

It will be observed that here a distinct difference is made between the existing 'theatre' and 'place of entertainment.' But in the very next paragraph is the following:

> We recommend that . . . it should be left to the managers of *places of entertainment* to decide whether smoking should be allowed in the auditorium or not. The law should enable a penalty to be imposed by a Court of Summary Jurisdiction upon persons who, after warning, or in spite of notices conspicuously exhibited, persist in smoking in the *auditorium of a theatre* where smoking is not allowed. (The italics are my own.)

Comparison of these extracts will show that in the very report itself is material for endless difficulties.

Another piece of verbal criticism may be made as to the name suggested for the new 'single licence': 'The Dramatic and Music Licence.' It is at least unusual to use an adjective and a noun harnessed in this fashion in an important public document. The only analogy is that both words end in 'ic.'

Indeed, the general mosaic effect of the whole report is shown by such verbal inaccuracies, or even by the varied spelling of an important word, which is spelled at first 'license' and afterwards 'licence.'

The Question of a Single License for Theatres and Music Halls

The findings of the various committees on this subject are as follows:

That of 1832 found that it was advisable to have all theatres

then existing in the metropolis, 'minor' as well as others, licensed by the Lord Chamberlain, who should be the sole authority for the purpose, and that they should be allowed 'to exhibit at their option . . . all such Plays as have received or shall receive the sanction of the Censor.'

The Commission of 1866 recommended that 'theatres, music halls, and other places of public entertainment be placed under one authority,' and that this duty should be placed on the Lord Chamberlain with a proper staff to aid him. Also that there should be one form of license for places where drinking and smoking are allowed in the auditorium; and another where they are not so allowed.

The Report of the Commission of 1892 suggests that the Lord Chamberlain should be the sole authority for theatres. It also suggested three forms of license—(*a*) 'for theatres proper,' without smoking and drinking in the auditorium; (*b*) for music halls; (*c*) for concert and dancing rooms.

But the recent Commission recommends a single license for all theatres and music halls and that the licensing authority for all such places should be (in the metropolis) the London County Council. This does not seem in accord with abstract justice. Such a way of treating different institutions dealing with similar matters seems in the circumstances lacking in fairness. For more than a century and a half one of these institutions, the theatre, showed absolute propriety and fairness in all matters of law and discipline, keeping in advance of all requirements made for public good—witness Garrick's doing away with the 'footman's gallery,' which was a centre and prolific source of brawling, and Macready's stopping the promenade. But the other institution—the music hall—following the 'minor' theatre, kept up an everlasting series of encroachments on the rights of others, and having once got a foothold, made illegal efforts to accomplish its ends, growing ever bolder in proportion to the leniency shown. It is surely a questionable policy for the law to be coerced into partisanship by breaches of the law.

The Theatre License

The power of licensing theatres in the metropolis, as that division of space was in the reign of George the Second, has since the passing of Walpole's Act (1737) been in the hands of the Lord Chamberlain, as shown at the beginning of this article. But at the above date only two theatres were officially recognised, those regulated by the patents given in 1662 by Charles the Second to Sir William Davenant and to Thomas Killigrew. Davenant's patent was a repetition of that granted by Charles the First and surrendered in 1661.

These two patents, almost identical in their wording though the clauses are differently arranged, largely influenced the wording of the Theatres Act of 1843. This was especially so with regard to Censorship, it being a condition of the vitality of the patent: 'We do hereby strictly command and enjoyn that from henceforth no new play shall be acted by either of the said companies' (Davenant's or Killigrew's—both names are mentioned in each patent) 'containing any passage offensive to piety and good manners, nor any old or received play containing any such offensive passage as aforesaid, until the same shall be corrected and purged by the said masters or governors of the said respective companies. . . .' Then follows a clause, not only of historical interest, but bearing on the contention made by certain modern 'advanced' dramatists, as to full freedom of choice of subjects:

And we do likewise present and give leave that all the women's parts to be acted in either of the said two companies for the time to come may be performed by women, so long as these recreations may . . . be esteemed, not only of harmless delight, but useful and instructive representations of human life.

But whilst the patent theatres were trying to cope with the demand for theatrical performances their inadequacy to do so was becoming apparent. Despite the wail of Edmund Kean at the Commission of 1832—'We are not generally a dramatic nation, and it [the drama] is more on the decline than ever'—the people of England were showing that they wanted, and would have, the drama. Though it was believed that the patent theatres had monopoly, other theatres were actually licensed annually by the Lord Chamberlain, among those in London being the King's Theatre (St. James's, Haymarket), the Little Theatre in the Haymarket, the Lyceum, the Olympic Pavilion, the Adelphi.

In addition to these, there had grown up a host of theatres held under the 'Disorderly Houses' Act (which even now applies to music halls), but in which a practice had gradually grown up of giving theatrical performances. There were occasional prosecutions; but as a working practice they had immunity. Edmund Kean on being asked, regarding his playing at one of them, if he considered himself liable to an action at law for so doing, answered cynically: 'I never paid any consideration to the subject.' Among these 'Minor' theatres, as they were called, was the Coburg Theatre, larger than Drury Lane, and employing a *personnel* of at least five hundred people. Also the Surrey Theatre, holding two thousand three hundred persons.

It will be seen that the situation of a hundred years ago, between the licensed theatres and the 'minor' theatres, is reproduced to-day in that between the 'theatres' and the 'music halls.'

The 'Censorship'

Some of those who have been lately liberating their thoughts in print regarding the 'Censorship' seem to take it that it is a comparatively late exercise of Royal Authority through the King's nominee, the Lord Chamberlain. Some take it as beginning with the Act of 1843 ('The Theatres Act'). Others, a little better educated on the subject, place it as far back as 1737 (Walpole's Act). But in reality the earlier of these simply put into statutory form, and endowed with statutory force, the regulations which had for long controlled theatres; in fact, the Lord Chamberlain had exercised the power over plays and players from 'time immemorial.' The office of 'Master of the Revels' was appointed in 1545—at least it has been traced back as far as that date. He was originally appointed to superintend the household of the King in relation to Court entertainments. The third holder of the office in sequence, Edmund Tylney (Elizabeth and James the First), was the first to exercise authority in licensing and correcting plays publicly acted. He appears to have acted in this respect just as did the Examiner appointed by the Act of 1737. He read the plays; he erased such parts as he objected to; or if he objected to them entirely he forbade them. The Master of the Revels was appointed by patent under the Great Seal, and was controlled in a degree by both the Privy Council and the Star Chamber, and up to the above period he by his own authority licensed theatres. The Crown licensed the players with the power to open a theatre, but the actual license to such theatre was given by the Master of the Revels himself. Up to 1624 the Lord Chamberlain did not exercise direct authority over players; before that time the Master of the Revels did not look to the Lord Chamberlain for authority. Sir John Astley (*temp.* James the First) was authorised to exercise a complete control in every way over both plays and players; but in 1624 the Crown exercised its power directly through the Lord Chamberlain. This power lasted down to 1737, when Walpole's Act was passed.

Thus it will be seen that a censorship, or control of some sort over plays to be presented in public, was exercised by the King from the very beginning of the Theatre as a national institution. As theatres and players grew in popularity, and so in importance, the law regarding them enlarged also; but at no time was the question of a censorship deleted from the rules of authority. The Report of 1832 said: 'In order to give full weight to the responsibility of the situation, it should be clearly understood that the office of the Censor is held at the discretion of the Lord Chamberlain, whose duty it would be to remove him, should there be any just ground for dissatisfaction as to the exercise of his

functions.' Herein are two marked inferences: firstly, the strengthening of the sense of the responsibility of both the Lord Chamberlain and his adviser, the Examiner of Plays; and secondly, that the inferred appeal from the Examiner is to the Lord Chamberlain himself, the official in whose hands the responsibility is placed by statute. The correctness of the recommendation on which the Statute of 1843 was based is shown in the Report of the Commission of 1866 on the working of the various theatrical Acts, where the Committee stated (Clause 9): 'That the censorship of plays has worked satisfactorily, and that it is not desirable that it should be discontinued. On the contrary, that it should be extended as far as practicable to the performances in music halls and other places of public entertainment.' This opinion is re-endorsed by the Commission of 1892, where in the last clause the above words are repeated verbatim.

In the Report before us all this is changed. The words 'Censor' and 'Censorship'—not used in either of the Acts of Parliament—are retained; but the retention is a misuse of words or, at best, a new application to the word of a meaning so different from that already accepted of it as almost to become a marked 'terminological inexactitude.' This is shown by a comparison of various suggestions. 'We recommend that the office of Examiner of Plays should be continued' (p. xii). 'The Lord Chamberlain should remain the Licenser of Plays' (p. xi). 'The producers of plays should have access, prior to their production, to a public authority which shall be empowered to license plays as suitable for performance' (p. viii). 'It should be his (the Lord Chamberlain's) duty to license any play submitted to him unless he considers that it may reasonably be held to be' . . . . and here follows a list of offences (p. xi). 'It shall be optional to submit a play for license, and legal to perform an unlicensed play, whether it has been submitted or not.' Quite comfortable indictments, to be made by the Director of Public Prosecutions or the Attorney-General, may follow in case of breaches of the ordinary laws, the Commission evidently considering that better justice is done by allowing the horse to be stolen and then to punish for a committed offence, than to lock the stable door *before* the entry of the thief.

In the ordinary belief the duty of a Censor is to prevent offence, his action being *before* publicity has been effected. This was the view taken by the framers of the Acts of 1737 and 1843. By the twelfth section of the later Act, the judgment of the Lord Chamberlain as to suitability of a play or of any part of it may be given before or after the production. Purely legal authorities already can take action *after* offence has been committed; it is the exceptional and manifest duty of a Censor to prevent rather than punish offence. This is quite in accord with

the first finding of this very Commission: '*the public interest requires that theatrical performances should be regulated by special laws.*' Why, then, in the name of common sense, do the Commissioners call by the name of 'Censor' an official who not only does not forbid at all, but who is not even empowered himself to take or direct even *ex post facto* proceedings?

The reason is only too painfully plain. The Committee, seemingly unwilling to take direct or effective measures, has worked into one inharmonious patchwork the opinions and wishes expressed by every class of witnesses examined—most notably when the individual witnesses are either 'crank,' vain, or self-interested—if not swayed by all three of these motive powers.

In plain fact, the Committee has been largely actuated by the sentiments of that Midland mayor who, in his inaugural speech, declared his intentions during his year of office to 'show neither partiality on one side nor impartiality on the other; but to hold the balance equal between right and wrong.'

Authors

A thing which entirely puzzles a student of the subject with regard to the late Commission is to know where, except under one condition, the authors come in at all. Up to 1832 they had a very distinct grievance which Lytton Bulwer brought before the House of Commons in that year, the Commission on Dramatic Literature being the result. At that time that form of literary copyright which Scrutton speaks of as 'play-right' did not exist. As the learned author says, 'the law of the drama is entirely statutory.' It was due to the Report of the Commission of 1832 (Clause 7), that the Act 3 William IV, cap. 15 (which with 5 & 6 Vict. cap. 45 regulates play-rights), was passed. But it must not be forgotten that the very Commission which suggested this Act, which was passed a year afterwards, also endorsed the institution of Censorship (made statutory in 1737), in the shape of the Lord Chamberlain's right to license plays if satisfactory to him; that the Act of 1843 actually enlarged and defined the Censorship established in law in 1737, and that two Commissions since have endorsed that finding.

As a matter of fact, there is no direct censorship whatever on the author. He can publish his play when and how he pleases, so long as he does not offend against certain laws made for the public good and enforceable by the police. The licence given by the Lord Chamberlain as Censor of a play is given to the manager who wishes to produce it on the stage. It is not a license for the play at all, but for the *acting* of it; and its cause is entirely due to the fact that human beings are different from words. There can be no confusion if people will only bear in mind that human

beings are different from other animals, let alone from words. The customs and the laws which are at first the embodiments of—and later the authorities for—customs ruling human action, have long ago ruled that for the general human good even the impulses of nature must be kept in check. And so, although we do not bear the cause always in mind, we do not allow to the human what we overlook in other animals. Hence arise such words expressive of ideas as 'discretion,' 'decency,' 'reticence,' 'taste,' and the whole illuminative terminology based on higher thought and ambition for the worthy advance of mankind. It is somewhat hard that at this late date it should be necessary to recall attention to such basic principles of advance as are the real furtherers of civilisation—which must be always progressive. It is the knowledge of this which induces their exponents to take militant action even to a small degree against such movements of reaction and decadence as are made by the defenders of indecency of thought and action—even though these masque under the name and guise of 'freedom.' Were such base efforts continuous, some effective means of repression and punishment would have to be brought to bear. These forces of reaction claim in substance: 'We are entitled to do wrong if we choose—even if we are punished for it afterwards.' The opposing forces, justified by the experience and practice of many centuries, say also in substance: 'Prevention is better than punishment.' It has always been held by responsible authorities that in decent life some things—the list varies—are not allowable. No one in this enlightened age wishes to go *contra* to natural laws; but surely the mysteries of life are to be treated with decorum. We do not discuss at the dinner-table or in the *salon* the needs of morbid physiology; we do not obtrude hygienic science on the gentleness and refinement of life. These things are all necessary and right, and an adequate knowledge of them is essential. They are a part of the organisation of complicated life, and must be treated—and respected—as such. Why then should we allow the conditions of the hospital, the lazar house, and the Assize Court to be treated in the fair realms of romance? These grim realities are bad enough as realities without being thrust upon us with our food—be the same physical, spiritual, or intellectual.

If, as was said by author and journalist witnesses, 'A play is not a play until it has been acted,' the matter is more complicated. If this view is to be accepted by Parliament, legislation will be a difficult matter; for that which can be expressed in general terms in written words must be given in detail on the stage—or else the stage loses altogether its poignancy of expression. It is all very well to speak of a play as being 'killed before birth'; but how is such a matter to get into the wording of an Act of Parliament?

If the idea as elaborated by Mr. Hall Caine is to be accepted, the word 'impossible' will have to be substituted for 'difficult.' For Mr. Hall Caine defines the collaborators as three—the author, the actor, and the audience. An official can deal with the work of an author—this is already done by the Examiner of Plays. The actor and manager can be dealt with *ex post facto* by the police in case of breach of any law of decency. But who is to deal with the audience, either beforehand or after the harm has been done?

But all this is refining, and may be classed with the evidence given by Mr. Walkley, the journalist, on the academic question of 'collective psychology.' Let it suffice that the law says through the Act of 1843, superseding that of 1737, that each play written shall *before being performed* be submitted for licence to the Lord Chamberlain, giving to that high functionary power to delegate his authority for primary examination to an official of his department. This authority (together with the power of delegation of it) is a statutory power. At its first giving it was accepted by the House with very few comments, and after a trial of over a century was strengthened instead of being relaxed. Moreover, it has been brought before two Parliaments since then, and their Committees have endorsed it to the full. In the circumstances it may be a difficult matter to get any Parliament to pass a new Act at the bidding of any body of men, however noteworthy they may be in their own craft. The probable note of parliamentary action was struck by one of the Commissioners, Lord Newton, in a question :

3620. But upon the whole you think that all the parties concerned are taking themselves too seriously—Yes, that is my view.

3621. It is my opinion too.

Any attendant at the sittings of the Commission might have fairly come to the same conclusion. It is, of course, but natural that men who look for fame and fortune to the results of their work shall earnestly endeavour to get all they can. But when they ask for a revision of the law it would be well to come to the seat of judgment with some sensible plan of reform. Such was hardly apparent. True, most of them came with fixed ideas; but even the best of them—authors, journalists, actors—seemed lamentably deficient in practical suggestions of reform. Over and over again Lord Gorell, who stood for law, and as a Judge of the High Court naturally wished to see that any changes in the existing law should be practical, asked the witnesses as to what alternatives they suggested, explaining that as they wished laws to be altered it would be necessary to have the new law put in such a shape and with such wording as would be practicable as well as understandable. But he was never able to get satisfactory

answers—at least so it seemed to a spectator. When pushed to a logical conclusion of his own theories the witness would in each case avoid the subject directly or indirectly.

Q. 816. Interference by whom?—*A.* Well, I am not a lawyer.

Q. 828. . . . who according to your scheme?—*A.* Well, I may say that I do not think that I ought to be asked to draft an Act. . . .

Q. 1834. . . . one wants to see the means which you suggest by which it could be practically done?—*A.* I do not see the means, but I hope that some means may be found. . . .

Q. 1970. Do you not think that there are a good many difficulties of a practical kind?—*A.* Yes . . . but I should think that it might be possible to thrash that out!

Q. 2170. I should have liked to have had some suggestion from the authors about it ?—*A.* Our feeling is . . . that we have never done anything as authors so bad as to make it necessary to have this extra strong machinery to suppress us.

This is the logic of the Suffragette, not that of the Statesman.

Q. 2321. . . . That does not tell us whether you mean by trial before some magistrate or judge . . .—*A.* I have not followed it up to that extent, and I do not profess to be able to say what would be the most advisable.

Q. 3699. . . . have you formulated any notion at all how you would put it in force?—*A.* I have not considered it. I think it would require a lawyer really to consider that point. I have nothing to suggest.

Q. 3964. (By Lord Plymouth) Could you define the grounds?—*A.* No, I would sooner not define the grounds, because I am not sufficient of a lawyer. I have not anything like sufficient knowledge of the possible legal offences.[1]

Yet these witnesses are the very persons who wish to change a system of law on a subject which has been deemed by four Commissions, including that now before us, to require special legislation, and which has stood the test of practical working for nearly two centuries of varying aims and views.

It really seems as though the dramatists, acting under the advice of the egregious Society of Authors, have been ill advised in asking for change of the law under which their craft has developed in freedom, status, and wealth. If the suggestions made in this Report should be carried into law they will assuredly find themselves in troubled waters. Their work will run the risk of being censored by local *as well as* by imperial authorities; for no local authority with power to license theatres (in which by the new law would be included music halls) would submit its own freedom of action provided for the good of its own public, to be interfered with. It would take steps to secure that freedom before giving

[1] At the same time it is right to say that there was no lack of schemes—mostly elaborate and impracticable, or aimed to make ineffectual any law which might be passed—to take the place of the present law and practice. Indeed, some of the witnesses seemed to produce elaborate schemes with the facility with which, according to Carlyle, the Abbé Sieyès produced to the National Assembly ready-made constitutions.

license to any theatre under the new conditions. Such would necessitate that the local manager who asks for theatre license should pledge himself beforehand not to permit any play to be given that had not at least the Lord Chamberlain's license. In addition such would have to require, in a general rule, that under no circumstance should an unlicensed play, though not prosecuted under the new rules, be performed in any playhouse subject to its jurisdiction.

Then, too, the local manager would for his own protection have to add a clause in any agreement with an author, getting indemnity from him in case of any loss resulting from prosecution. Indeed, should an Act be brought in to carry out the suggestion of the Commission, it would be necessary to enlarge the suggestion made on page xiv as to entitling a theatre-owner to cancel an existing lease or add to it a clause prohibiting the performance of unlicensed plays, so that an author's agreement with a manager would contain a similar protection for the latter.

In addition, under the suggested conditions the author with the manager would be liable to prosecution for indecency—a danger from which he is at present exempt, for under the present scheme of censorship the license is only for *performance*, in which the author has no responsibility.

If any author should act on the supposition that men of business, such as managers, would incur unnecessary risks or any not at present existing, without some form of indemnity or coercion to be exercised ultimately, they are vastly mistaken. If such an Act should pass, managers of theatres (under the new scheme) would, if seriously undertaking their business and intending to work it worthily and profitably, have to make some agreement or combination among themselves for mutual protection. They certainly would not permit of a system whereby the daring or unscrupulous author would advertise or benefit himself at their risk and expense. And to such a body a new manager more adventurous or less scrupulous than themselves would be a common foe, and could in any case have but a stormy career.

In fine, the Commission can hardly prove a success. So far as one can see, there is no reason for any interest involved—including the public—being pleased in case its finding should be carried into law. The theatre would lose status; inasmuch as instead of being on a royal and national base it would be purely local, and would after a certain time lose the right to sell excisable refreshment without going annually to the magistrates for license. The greater music-hall managers grumble. They would not have any advantage except an easiness of conscience from acting within instead of without the law; whilst their rivals in trade would have the right to smoke in

the auditorium—a privilege hitherto denied them. The right given to them to present 'full' plays as well as sketches they did not ask for, and do not want. The author would be in danger of punishment *ex post facto*, in common with the manager, for the production of an unlicensed play having any of the offences scheduled as barring the Censor's license; and would also be subject in his contract with the manager to new and stringent conditions, harder than any censorship.

In addition, there is an endless field for litigation in any of the following ways: The relative responsibility, in case of offence, of author and owner of the play when the former should have sold his rights; the clash of opinions—with corresponding right—between imperial and local authorities; the decision as to rights between makers of contracts—expressed or implied—in any branch of stage work; managers against authors, actors, owners, and the public; authors and managers against actors who might create offence, dangerous to rights and properties, by additions to or alterations of the licensed text, and by their manner of acting and speaking; action taken by the Public Prosecutor in case of indecency in unlicensed plays, or by the Attorney-General in *ex post facto* arraignment; in Excise matters under quite new conditions. This latter would be no chimerical thing, for the passing of such an Act as is suggested would bring under the London County Council and the Brewster Sessions all the theatres at present under the jurisdiction of the Lord Chamberlain, and regarding which no question purely of Excise can arise.

Newspapers, the day after the Report was presented to Parliament, called it a 'mosaic of Compromise.' They might have added a note on the lesson of the fable of Poggius: 'An Old Man and an Ass': 'The old man was willing to please Every Body, but had the Ill Fortune to please No Body, and lost his Ass into the Bargain.'

BRAM STOKER.