

CANNED MUSIC AND THE COMPOSER

BY HARRY B. SMITH

ARTISTS may seem a pretentious word to apply to certain of the groups and individuals hereinafter referred to, but let it be assumed that they are at least creative in intention and let us therefore call them artists by courtesy. Whether you concede their right to the name or dispute it is a matter of aesthetics, and we are concerned here with a question of ethics. In the words of the Prince of Denmark to his mother I ask you to "look on this picture, and on this":

In one of the great thoroughfares of New York, there towers a building many stories high, a monument to the prosperity of a company engaged in manufacturing and selling mechanical musical instruments, a powerful corporation grown rich by marketing its device for reproducing music by machinery. There are many other such companies and corporations in America, and together they constitute one picture. The other appears in the recent death, in absolute destitution, of a man whose writing gave pleasure to American theatre-goers for many years and whose songs are known today to hundreds of thousands of our people. There are many similar cases. From the days of Poe and Stephen Foster down to the present time the poet and the composer in these United States have lived on crumbs from the rich man's table—if and when they could find them.

It will hardly be denied that without composers there could be no music, yet these great corporations keep on growing rich and the creators of the music that they sell either receive a mere pittance for it or are paid nothing at all. The venders of canned music get the money; the actual

makers of their merchandise receive the alms which their despoilers have been compelled by law to bestow upon them, the same being generally fixed at two cents a grab, or, to be more accurate, at one third of two cents, for the publisher and the writer of the words share in this dishonorarium. After the most meticulous investigation I have failed to discover any skyscrapers named after American composers and erected by them with capital accumulated from this stipend.

Even the modest two cents is a recent beneficence and was obtained only after a long and bitter struggle, in which the law-makers were heavily on the side of the benevolent corporations and opposed to the grasping and avaricious composers. During this struggle the manufacturers of all varieties of canned music argued that they had an inalienable right to reproduce copyrighted compositions at their pleasure and without payment, and to exploit them for their own profit! These enterprising business men regarded it as preposterous that the composer should ask for any remuneration whatever, despite the fact that their records and machines were killing the sale of sheet music, the sole source of the composer's income! At last the just and righteous Solons intervened and said to these captains of industry: "No! You shall not crush the composer! You shall pay him one-third of two cents!"

Meditate on the ethics of it. A composer, a writer of words, and a publisher create a song. The government gives them the protection of copyright, by which they are supposed to control and enjoy—for a limited time—the property they have

created. But then the law says to them: "You shall sell an important part of your rights to certain persons at a price which the law and the purchasers designate, namely, two cents." In all other known transactions the owner fixes his selling price and is not compelled to sell at all if he can't get it. But in the case of music, the unfortunate owner is commanded and compelled to sell—and the law and the purchaser determine the price! Yet someone has said, "I care not who makes the nation's laws, if I may make its songs!"

This business now appears to be settled for all time. The manufacturers may take whatever they want—and the composers are free to accept their one-third of two cents and to emulate the colored parson who was glad to get his hat back.

II

But now the composers are engaged in another conflict in which the principle involved is identical. The thought has occurred to certain representatives of government by the people and for the people that the men who write music are still receiving too much protection under the copyright law, and so it is proposed to change that law to enable broadcasters by radio to take their property and use it without any payment at all and as they may see fit. The iniquity of the proposed amendment to the law is so atrocious that it seems incredible that even a Senator of the United States could have proposed it. What has prompted it? Have the composers and authors assured some Senator that they long to have their writings performed gratuitously? Or is it possible that the radio manufacturers and the broadcasters have suggested that they would like to have the use of other people's property without paying for it?

It would be difficult to find a parallel for this proposal in the history of legislation, even in America. Where has there ever been a case in which a government has said to the owner of property: "We have

legislated hitherto to protect you in your ownership; but now we propose to take your property away from you and give it, without money and without price, to others for *their* use and benefit." But the injustice only begins with this. It is further proposed that the radio manufacturers and the broadcasters shall in turn hand over this property, absolutely free, to the very consumers upon whom its owners depend for their existence! Let each man think it out for himself, whatever business may happen to be his. Suppose, for example, that you earn your living by making and selling fountain pens. Certain powerful corporations induce a Senator to bring in a bill to the effect that, as every home should have a fountain pen, they will present one free to every family and will continue to supply new ones as old ones wear out. And, as if this were not enough, they will obtain their supply of fountain pens from *you* without paying for them. Who, in such circumstances, would *buy* fountain pens from you?

The argument of those who favor bringing this piracy within the law is that broadcasting is not done for profit, and that, consequently, there should be no payment to those whose property is confiscated and whose means of livelihood are destroyed. But can anyone in his senses believe that clever and enterprising commercial men are devoting their time and energy to what has developed into an enormous industry without profit of some kind? It is true that up to the present time, no plan has been devised to compel the public to pay directly for listening in. But a profit is obviously made in other ways—much of it, of course, from the sale of apparatus. Thus, the music taken from its owners, when transmitted by radio, *is* given a public performance for profit, even if the profit be indirect; and a public performance for profit in which authors and composers have no share is exactly the kind of piracy every intelligible copyright law on earth expressly forbids.

Indeed, the fact that no direct fee is

charged for listening in has nothing to do with the principle involved. A man is the sole owner of his own property, whether it be a song or a pair of shoes. It is no excuse for the theft of a pair of shoes for the purloiners to say: "I didn't take them for profit. I have plenty of shoes. I am going to give them away." The analogy fails in this: if a man has his shoes stolen by a philanthropist who says that he does not need them, that he is not stealing shoes for profit, the despoiled person loses his shoes, but that is all. He may have another pair or he may be able to get along without shoes at all. But those who propose to take away the works of composers who depend on those works for their livelihood propose to deprive the unfortunate owners of their very means of subsistence. Who will buy songs and pay for them when anyone may hear them sung by professional singers free of cost, not only once, but time after time, until they wear out? Who, indeed, will buy even a pianola roll or a phonograph record (at a price of from one dollar to five dollars, of which the composer receives one-third of two cents) if he can hear the same music night after night for nothing?

I believe that no other group of fairly decent and moderately honest men have ever found themselves in the position in which American composers and authors are at present. There have been crises and emergencies in which governments have commandeered necessities and distributed them for the general good, but only among nations reverting temporarily to savagery has there been no compensation to the owners; and I can recall no case in which such action has been taken against works of art.

III

Composers and authors have never been distinguished as money makers. Charles Dickens, the most popular novelist of his time, received what was thought to be a large income—about half what he would have received if our copyright law had

not then permitted American publishers to reprint his novels without paying him. But he certainly left no fortune. In recent years various benevolent schemes have been evolved to mitigate the poverty of his children and grandchildren. If he had devoted his ability and energy to the establishment of a business in the pickle manufacturing line, his descendants would now be enjoying the profits of an old reliable firm. Instead, he only wrote "Pickwick," "A Christmas Carol" and other books that have given pleasure to millions, so the members of his family, with one distinguished exception, are now aided by the Dickens Fellowship.

This is a typical case and shows the inadequacy of the copyright laws, even as they now exist. An author devotes his life to the only ability that he possesses; he writes books; he creates the only kind of property he knows how to create. The law says to him: "This property owes its existence solely to you—but you shall own it for only a limited time. Then it shall be taken from you, if you survive, or from your children after you, and after that it shall belong to anyone who chooses to exploit it at a profit to himself." But if the author had devoted his life and labor to acquiring any property other than his writings, the law would say to him: "That belongs to you and your heirs forever, or until you or they see fit to dispose of it." In other words, if a man is foolish enough to write books or compose music, the law sets a definite limit on the time that he and his family may have the use and benefit of the property he has created, and when that prescribed time elapses the law permits its confiscation.

It is true that in this day and generation there are authors and composers who realize substantial incomes from their writings. Some of them even acquire moderate wealth. But these are surely the exceptions. Those of more than ordinary talent are nearly all poor men. Certain playwrights, novelists and popular composers enjoy a few years of success, during which they

earn incomes equal to those of prosperous plumbers. Occasionally a newspaper paragraph reports that Mr. So-and-So, the novelist, has made seventy thousand dollars in one year from a successful book, or that Mr. Blank, the composer of several musical comedies, earned a hundred thousand dollars last season. But it is always forgotten that Mr. So-and-So and Mr. Blank may never again attain to that lofty financial eminence. The prosperity even of the few is precarious, and most authors and composers, year in and year out, find the small form income-tax blanks adequate to their requirements.

IV

This brings me to the subject of the income tax and its unfairness to writers. Let us suppose that Mr. John Doe, a novelist, has lived a hand-to-mouth existence for twenty years. Finally, luck, for once, comes his way, and he writes a novel which, in one year, earns him the sum of twenty-five thousand dollars. He has never done it before and he will never do it again. Old debts descend upon him and he pays them. What is left is little. For the future he has no provision. During the same year Mr. Richard Roe has five hundred thousand dollars left to him by an uncle in the form of property that averages a five per cent income. His income is thus twenty-five thousand dollars a year. Well, Mr. Doe and Mr. Roe pay precisely the same income tax—though Mr. Doe may make nothing at all after his one success and Mr. Roe's income continues as long as he lives. Mr. Doe spends for living expenses what his creditors and the government leave him of the twenty-five thousand dollars income during his one fat year, and his unfortunate family is left in poverty. He may have to be buried by a charitable organization, as was actually the case with a "successful" playwright recently deceased. Mr. Roe, however, goes on collecting his twenty-five thousand dollars a year all the rest of his life and then dies

leaving his five hundred thousand dollars of capital intact.

Is it not time that this great nation, (one conforms to tradition in the use of the adjective), with a government whose specialty is protecting industries, should protect those whom we classify, for want of better words, as creative artists? No alleged civilized government in the world does so little for them. It is, of course, too much to expect that our government will ever confer pensions, subsidies, or any other form of direct reward for achievement in the arts. The art and literature of America, such as they are, do not owe the state a penny or a grain of gratitude. The law simply gives creative artists copyright on their works, and with this protection for a limited time they manage to earn their livings. A few, perhaps two out of every hundred, acquire a competence. The rest live by constant hard work and die in poverty. A distinguished composer died recently who had been prosperous, for a composer, for many years. But was he able to retire when age began to overtake him? His income, alas, had never been regular enough for that, and so he died of overwork in the sixties.

This man's old associates are now battling with corporations of enormous wealth and power for the protection of such men as he was. They are going before a Senatorial committee as suppliants and saying: "Please, Senators, do not take away the rights given us by the existing copyright law of the United States. Do not take away the only property that we possess, and hand it over gratis to those who already have more money than they know what to do with. You don't go into a baker's shop and appropriate the bread he sells because you think it will make a political hit to give free bread to the public. Therefore, don't take our books, our plays, and our songs!"

It is a pitiable thing that such impractical, unbusiness-like men, who have imagination instead of the money-making instinct, are obliged to go as beggars to

the government to petition that they be not despoiled of their only means of subsistence. The extremists of the French Revolution, the Heberts and the Carriers, sent philosophers and poets to the guillotine on the ground that they were useless members of society. It is, perhaps, more merciful to decapitate a poet than to starve him to death. André Chenier is now the hero of an opera—but one of the most popular song writers this country has known in recent years died a pauper and was buried in the potter's field.

V

The United States is still referred to as young. Cynical critics, foreign ones especially, say we have no art. Some even deride our literature. A London critic not long ago expressed serious doubts that *any* American could write a good play. If that is true, then it is certainly not due to lack of effort. If we ever *are* to have a sound native art we must recognize that effort—we must give it fair play, an equal chance with trade. Our artists—to call them so for the sake of brevity—are too much imbued with the American spirit of independence to ask for patronage. They do not ask a government that squanders millions whenever a politician can jam through an appropriation,—they do not ask that government to pension artists; they do not ask for a Prix de Rome, or for any sort of benevolent paternalism. They merely ask that the rights given them by the government through copyright be not rescinded for the benefit of a combination of rich and powerful corporations. They merely ask that many poor men be not robbed for the further enrichment of a few wealthy men.

There are just two composers in America who are making large incomes at present. One happens to have several successes in the musical comedy line. The other is part proprietor of a theatre and has his own publishing business. There are others, of course, who make respectable livings, but

so does the druggist on the corner. Before the Senate committee of patents, at the recent hearing, a composer foolishly testified that "at one time" he had made sixty thousand dollars a year out of his publications. It sounded impressive, but it was a vain boast, and I venture to say that the "one time" was one year and no more. Another well-known musician, since deceased, asserted that he had made five hundred dollars a day as leader of a band playing for phonograph companies. He neglected to state that this was for one week a year; but it sounded like big money to Senators who have to live on their salaries.

Floating paragraphs tell of the large royalties paid for that vocal masterpiece, "Yes, We Have No Bananas," and the impression is created that song writers are rivals of Henry Ford. This being so, it is reasoned, composers and authors are financial octopi, and ought to be robbed of their ill-gotten gains. They should have their piffling songs sung in every home that can stand them, without profit to their grasping souls. But this is precisely the reasoning of certain organizations of criminals whose members decide just how much money one of their compatriots is entitled to and so justify themselves in relieving him of what they consider his surplus. If the fact that a man is rich warrants his being robbed, why not appoint a committee to take from Mr. Rockefeller all his oil excepting a reasonable supply for his own car and distribute it free in the homes of the oilless?

The attitude of politics toward art was well expressed by the remark once made by a Senator, who has since been mentioned as a presidential possibility, to a well-known composer. "Why, Mr. X." said this statesman, "you should not expect to be paid for your music. God gave you your talent and your work belongs to the world. You should be proud to have your songs sung by the people. You should be above asking for payment for them."

"Fine!" said the musician; "and I am to be fed by ravens, I suppose."

THE TRIAL OF THE DEAD CLEOPATRA

BY VACHEL LINDSAY

I

She Becomes a Soul

1.

SAID Set, the great accuser: "You poisoned your young brothers."
But the mummy of Cleopatra whispered, "These were the slanders of Rome."
"You poisoned your faithful servants.
You sold the Nile to Caesar."
But the mummy of Cleopatra whispered, "These were the slanders of Rome."
"You gambled with Marc Antony, for the last wheat in Egypt and the last blood of Egypt."
But the mummy of Cleopatra whispered, "These were the slanders of Rome."

2.

And Set, the soul defiler, the hyena, the tomb-violator,
Yet Prosecuting Attorney of gods and stars,
Eternal in the eternal Judgment Room,
Said, "Antony is again my witness."
For the ninth time Thoth drew him on the wall—
Again that ink was a green and sulphurous flame,
And Antony was pictured in his armor.
For the ninth time Thoth gave that Ibis cry,
And called forth that soldier from his tent.
He stood, a pillar of flame and smoking gold.

3.

Once the goddess high priests make of girls,

The Queen, who was more than mortal in her sorrow,
A speaking mummy, neither living nor dying,
A human log, held upright by Anubis,
Whispered again in the face of Set the deathless,
With the pride that flies to star-bright humbleness:—
"Cleopatra, the young girl, died when Caesar died;
Only my shadow revelled with Antony,
Coming forth by day from this dark hall,
As all you high gods knew from the beginning.
He was the plume of Caesar, nothing more."
She spoke, and the eyes of the dead Antony
Became the idiot eye-holes of a helmet,
The visor down. And his world-flashing sword
Was smoke, and dust—his face a vanishing flame.

4.

Then Cleopatra called through the dusty court:—
"I am the heart of Caesar, nothing more.
I have waited patiently for this, my judgment,
As all you high gods know, since Caesar died,
And brought me here that day that you judged him.
Queens have been born, have reigned, and have grown old,
Have come to judgment and to resurrection
Since Caesar knocked with me upon this door,