

THE ELLSWORTH BILL.

When Senator ELLSWORTH introduced last year his bill to prevent the publication of portraits without the consent of the originals, his apparent purpose commanded the sympathy of many persons who doubted both the efficacy and the legitimacy of the means by which he proposed to attain his end. That end was apparently the protection of privacy, which is in much need of protection. It is an outrage upon an unoffending and private person to expose such a person to undesired publicity. Especially is it an outrage upon a refined woman. "The new journalism" holds that notoriety is really a desirable thing in itself, and that nobody is really offended by being "published." No doubt there are persons who really enjoy the publicity they affect to deplore. But there are others to whom it really gives pain. The proposition to require the consent of every person concerned as a condition precedent to the portrayal promised to put a stop to this abuse of publicity and commanded an extensive approval.

But this method of stopping an abuse was in itself evidently liable to abuse. Why should the law undertake to exercise a censorship over the pictures of a periodical which it does not undertake to exercise over the text? Anybody who is held up to public odium or ridicule, either by text or picture, has already his remedy at law. One of the peculiarities of the new journalism is that nobody, even those who patronize it and whose patronage makes its existence possible, makes any pretension of respecting it. Not only does the habitual reader or spectator of it despise it, but he comes to entertain an animosity against it. As a juror in a libel suit he would be inclined to visit it with exemplary penalties whenever one of its performances was brought before him. It is true that the law does not in terms protect any person against the mere invasion of his privacy, unless it is a physical invasion amounting to a trespass. But it does not follow that the person whose privacy is invaded is remediless under the law as it stands. It is only after a judicial decision to that effect has been had that an amendment to the statutes, in the nature of the original Ellsworth bill, would be in order.

However that may be, it appears that the object of the bill, as now explained by its author, is not to protect privacy at all, but to discourage pictorial comments upon the public actions of public men. Senator ELLSWORTH now declares that "public men" who "have been maddened by the cartoonists" have been forced into the support of his measure, and he enumerates among its promoters "O'GRADY, CROKER, PLATT, and others." This is another thing altogether. The people who were last year disposed to applaud Mr. ELLSWORTH for his efforts to protect the privacy of private persons have not the least consideration in the world for the susceptibilities of statesmen and politicians. Moreover, some of them may recall a provision of the Constitution of the State of New York which sets forth that "every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to abridge the liberty of speech or of the press. With this clause of the Constitution the Ellsworth bill is plainly in conflict, in so far as the Ellsworth bill undertakes to prevent any citizen from "publishing his sentiments on all subjects" by means of pictures. The remedy of the politicians is in suits for damages, and much good may it do them.

As to the purpose which really attracted for the original Ellsworth bill whatever respectable support it received, that purpose can also be attained otherwise. If everybody who pretended to deplore the abuses of publicity refused to buy the journals in which publicity was abused, the abuses would very soon cease. But nobody can enter a public conveyance without seeing people whose appearance indicates that they are sensitive to their own repute, gloating over the vulgarities and horrors for which, presumably, they would scornfully denounce "the newspapers" in general. They should either conform their practice to their theory or conform their theory to their practice.