THE EVOLUTION OF COPYRIGHT.

"THE only thing that divides us on the question of copyright seems to be a question as to how much property there is in books," said James Russell Lowell two or three years ago; and he continued,

but that is a question we may be well content to waive till we have decided that there is any property at all in them. I think that, in order that the two sides should come together, nothing more is necessary than that both should understand clearly that property, whether in books, or in land, or in anything else, is artificial; that it is purely a creature of law; and, more than that, of local and municipal law. When we have come to an agreement of this sort, I think we will not find it difficult to come to an agreement that it will be best for us to get whatever acknowledgment of property we can, in books, to start with.

"An author has no natural right to a property in his production," said the late Matthew Arnold, in his acute and suggestive essay on copyright,

but then neither has he a natural right to anything whatever which he may produce or acquire. What is true is that a man has a strong instinct making him seek to possess what he has produced or acquired, to have it at his own disposal; that he finds pleasure in so having it, and finds profit. The instinct is natural and salutary, although it may be over-stimulated and indulged to excess. One of the first objects of men, in combining themselves in society, has been to afford to the individual, in his pursuit of this instinct, the sanction and assistance of the laws, so far as may be consistent with the general advantage of the community. The author, like other people, seeks the pleasure and the profit of having at his own disposal what he produces. Literary production, wherever it is sound, is its own exceeding great reward; but that does not destroy or diminish the author's desire and claim to be allowed to have at his disposal, like other people, that which he produces, and to be free to turn it to account. It happens that the thing which he produces is a thing hard for him to keep at his own disposal, easy for other people to appropriate; but then, on the other hand, he is

an interesting producer, giving often a great deal of pleasure by what he produces, and not provoking nemesis by any huge and immoderate profits on his production, even when it is suffered to be at his own disposal. So society has taken him under its protection, and has sanctioned his property in his work, and enabled him to have it at his own disposal.

Perhaps a consideration of the evolution of copyright in the past will conduce to a closer understanding of its condition at present, and to a clearer appreciation of its probable development in the future. It is instructive as well as entertaining to trace the steps by which men, combining themselves in society, in Arnold's phrase, have afforded to the individual author the sanction of the law in possessing what he has produced; and it is no less instructive to note the successive enlargements of jurisprudence by which property in books — which is, as Lowell says, the creature of local municipal law — has slowly developed until it demands and receives international recognition.

I.

The maxim that "there is no right without a remedy," indicates the line of legal development. The instinct of possession is strong; and in the early communities, when most things were in common, it tended more and more to assert itself. When anything which a man claimed as his own was taken from him, he had a sense of wrong, and his first movement was to seek vengeance — much as a dog defends his bone, growling when it is taken from him, or even biting. If public opinion supported the claim of possession, the claimant would be sustained in his effort to get revenge. So, from the admission of a wrong, would grow up the recognition of a right. The moral right became a legal right as soon as it received the sanction of the state. The state first commuted the right of vengeance, and awarded damages, and the action of tort was born. For a long period property was protected only by the action for damages for disseisin; but this action steadily widened in scope until it became an action for recovery; and the idea of possession or seisin broadened into the idea of ownership. This development

went on slowly, bit by bit and day by day, under the influence of individual self-assertion and the resulting pressure of public opinion, — which, as Lowell once tersely put it, is like that of the atmosphere: "You can't see it, but it is fifteen pounds to the square inch all the same."

The individual sense of wrong stimulates the moral growth of society at large; and in due course of time, after a strenuous struggle with those who profit by the denial of justice, there comes a calm at last and ethics crystallize into law. In more modern periods of development, the recognition of new forms of property generally passes through three stages. First, there is a mere moral right, asserted by the individual and admitted by most other individuals, but not acknowledged by society as a whole. Second, there is a desire on the part of those in authority to find some means of protection for this admitted moral right, and the action in equity is allowed — this being an effort to command the conscience of those whom the ordinary policeman is incompetent to deal with. And thirdly, in the fulness of time, there is declared a law setting forth clearly the privileges of the producer and the means whereby he can defend his property and recover damages for an attack on it. This process of legislative declaration of rights is still going on all about us and in all departments of law, as modern life develops and spreads out and becomes more and more complex; and we have come to a point where we can accept Ihering's definition of a legal right as "a legally protected interest."

As it happens, this growth of a self-asserted claim into a legally protected interest can be traced with unusual ease in the evolution of copyright, because copyright itself is comparatively a new thing. The idea of property was probably first recognized in the tools which early man made for himself; and in the animals or men whom he subdued; later, in the soil which he cultivated. In the beginning the idea attached only to tangible things — to actual physical possession — to that which a man might pass from hand to hand. Now in the dawn of history nothing was less a physical possession than literature; it was not only intangible, it was invisible even. There

was literature before there was any writing, before an author could set down his lines in black and white. Homer and the rhapsodists published their poems by word of mouth. *Litera scripta manet;* but the spoken poem flew away with the voice of the speaker and lingered only in the memory. Even after writing was invented, and after parchment and papyrus made it possible to preserve the labors of the poet and the historian, these authors had not, for many a century yet, any thought of making money by multiplying copies of their works.

The Greek dramatists, like the dramatists of to-day, relied for their pecuniary reward on the public performance of their plays. There is a tradition that Herodotus, when an old man, read his *History* to an Athenian audience at the Panathenaic festival, and so delighted them that they gave him as a recompense ten talents — more than twelve thousand dollars of our money. In Rome, where there were booksellers having scores of trained slaves to transcribe manuscripts for sale, perhaps the successful author was paid for a poem, but we find no trace of copyright or of anything like it. Horace (*Ars Poetica*, 345) speaks of a certain book as likely to make money for a certain firm of booksellers. In the other Latin poets, and even in the prose writers of Rome, we read more than one cry of suffering over the blunders of the copyists, and more than one protest in anger against the mangled manuscripts of the hurried servile transcribers. But nowhere do we find any complaint that the author's rights have been infringed; and this, no doubt, was because the author did not yet know that he had any wrongs. Indeed, it was only after the invention of printing that an author had an awakened sense of the injury done him in depriving him of the profit of vending his own writings; because it was only after Gutenberg had set up as a printer, that the possibility of definite profit from the sale of his works became visible to the author. Before then he had felt no sense of wrong; he had thought mainly of the honor of a wide circulation of his writings; and he had been solicitous chiefly about the exactness of the copies. With the invention of printing there was a chance of profit; and as soon as the author saw this profit diminished by an unauthorized

reprint, he was conscious of injury, and he protested with all the strength that in him lay. He has continued to protest from that day to this; and public opinion has been aroused until by slow steps the author is gaining the protection he claims.

It is after the invention of printing that we must seek the origin of copyright. Mr. De Vinne shows that Gutenberg printed a book with movable types, at Mentz, in 1451. Fourteen years later, in 1465, two Germans began to print in a monastery near Rome, and removed to Rome itself in 1467; and in 1469 John of Spira began printing in Venice. Louis XI sent to Mentz Nicholas Jenson, who introduced the art into France in 1469. Caxton set up the first press in England in 1474.

In the beginning these printers were publishers also; most of their first books were Bibles, prayer-books, and the like; but in 1465, probably not more than fifteen years after the first use of movable types, Fust and Schoeffer put forth an edition of Cicero's *Offices*, — "the first tribute of the new art to polite literature," Hallam calls it. The original editing of the works of a classic author, the comparison of manuscripts, the supplying of *lacunæ*, the revision of the text, called for scholarship of a high order; this scholarship was sometimes possessed by the printer-publisher himself; but more often than not he engaged learned men to prepare the work for him and to see it through the press. This first edition was a true pioneer's task, it was a blazing of the path and a clearing of the field. Once done, the labor of printing again that author's writings in a condition acceptable to students would be easy. Therefore the printer-publisher who had given time and money and hard work to the proper presentation of a Greek or Latin book, was outraged when a rival press sent forth a copy of his edition and sold the volume, at a lower price possibly, because there had been no need to pay for the scholarship which the first edition had demanded. That the earliest person to feel the need of copyright production should have been a printer-publisher, is worthy of remark; obviously in this case the printer-publisher stood for the author and was exactly in his position. He was prompt

to protest against this disseisin[1] of the fruit of his labors; and the earliest legal recognition of his rights was granted less than a score of years after the invention of printing had made the injury possible. It is pleasant for us Americans to know that this first feeble acknowledgment of copyright was made by a republic. The Senate of Venice issued an order, in 1469, that John of Spira should have the exclusive right for five years to print the epistles of Cicero and of Pliny.[2]

This privilege was plainly an exceptional exercise of the power of the sovereign state to protect the exceptional merit of a worthy citizen; it gave but a limited protection; it guarded but two books, for a brief period only, and only within the narrow limits of one commonwealth. But, at least, it established a precedent — a precedent which has broadened down the centuries until now, four hundred years later, any book published in Venice is, by international conventions, protected from pillage for a period of at least fifty years, through a territory which includes almost every important country of continental Europe. If John of Spira were to issue to-day his edition of Tully's *Letters*, he need not fear an unauthorized reprint anywhere in the kingdom of which Venice now forms a part, or in his native land Germany, or in France, Belgium or Spain, or even in Tunis, Liberia or Hayti.

The habit of asking for a special privilege from the authorities of the state wherein the book was printed spread rapidly. In 1491 Venice gave the publicist Peter of Ravenna, and the publisher of his choice, the exclusive right to print and sell his *Phœnix*,[3] — the first recorded instance of a copyright awarded directly to an author. Other Italian states "encouraged printing by granting to different printers exclusive rights for fourteen years, more or less, of printing specified classics," — and thus the time of the protection accorded to John of Spira was

[1] If any lawyer objects to the use of the word "disseisin" in connection with other than real property, he is referred to Prof. J. B. Ames's articles on Disseisin of Chattels, in the *Harvard Law Review*, Jan.–March, 1890.

[2] Sanuto, Script. Rerum. Italic., t. xxii, p. 1189; cited by Hallam, History of Middle Ages, chap. ix, part ii.

[3] Bowker, Copyright, p. 5.

doubled. In Germany the first privilege was issued at Nuremberg, in 1501. In France the privilege covered but one edition of a book; and if the work went to press again, the publisher had to seek a second patent.

In England, in 1518, Richard Pynson, the King's Printer, issued the first book *cum privilegio;* the title page declaring that no one else should print or import in England any other copies for two years; and in 1530 a privilege for seven years was granted to John Palsgrave "in the consideration of the value of his work and the time spent on it; this being the first recognition of the nature of copyright as furnishing a reward to the author for his labor."[1] In 1533 Wynkyn de Worde obtained the King's privilege for his second edition of Witinton's *Grammar.* The first edition of this book had been issued ten years before, and during the decade it had been reprinted by Peter Trevers without leave — a despoilment against which Wynkyn de Worde protested vigorously in the preface to the later edition, and on account of which he applied for and secured protection. Here again is evidence that a man does not think of his rights until he feels a wrong. Ihering bases the struggle for law on the instinct of ownership as something personal, and the feeling that the person is attacked whenever a man is deprived of his property; and, as Walter Savage Landor wrote: "No property is so entirely and purely and religiously a man's own as what comes to him immediately from God, without intervention or participation." The development of copyright, and especially its rapid growth within the past century, is due to the loud protests of authors deprived of the results of their labors, and therefore smarting as acutely as under a personal insult.[2]

The invention of printing was almost simultaneous with the Reformation, with the discovery of America, and with the first voyage around the Cape of Good Hope. There was in those days a ferment throughout Europe, and men's minds were making ready for a great outbreak. Of this movement, intellectual on one side and religious on the other, the governments

[1] T. E. Scrutton, Laws of Copyright, p. 72.
[2] Ihering, The Struggle for Law (translated by J. J. Lalor).

of the time were afraid; they saw that the press was spreading broadcast new ideas which might take root in the most inconvenient places, and spring up at the most inopportune moments; so they sought at once to control the printing of books. In less than a century after Gutenberg had cast the first type, the privileges granted for the encouragement and reward of the printer-publisher and of the author, were utilized to enable those in authority to prevent the sending forth of such works as they might choose to consider treasonable or heretical. For a while, therefore, the history of the development of copyright is inextricably mixed with the story of press-censorship. In France, for example, the edict of Moulins, in 1566, forbade "any person whatsoever printing or causing to be printed any book or treatise without leave and permission of the King, and letters of privilege."[1] Of course no privilege was granted to publisher or to author if the royal censors did not approve of the book.

In England the "declared purpose of the Stationers' Company, chartered by Philip and Mary in 1556, was to prevent the propagation of the Protestant Reformation."[2] The famous "Decree of Star Chamber concerning printing," issued in 1637, set forth:

> that no person or persons whatsoever shall at any time print or cause to be imprinted any book or pamphlet whatsoever, unless the same book or pamphlet, and also all and every the titles, epistles, prefaces, proems, preambles, introductions, tables, dedications and other matters and things whatsoever thereunto annexed, or therewith imprinted, shall be first lawfully licensed.

In his learned introduction to the beautiful edition of this decree, made by him for the Grolier Club, Mr. De Vinne remarks, that at this time the people of England were boiling with discontent; and, "annoyed by a little hissing of steam," the ministers of Charles I "closed all the valves and outlets, but did not draw or deaden the fires which made the steam;"

[1] Alcide Darras, Du Droit des Auteurs, p. 169.

[2] E. S. Drone, A Treatise on the Law of Property in Intellectual Productions, p. 56.

then "they sat down in peace, gratified with their work, just before the explosion which destroyed them." This decree was made the eleventh day of July, 1637; and in 1641 the Star Chamber was abolished; and eight years later the King was beheaded at Whitehall.

The slow growth of a protection, which was in the beginning only a privilege granted at the caprice of the officials, into a legal right to be obtained by the author by observing the simple formalities of registration and deposit, is shown in a table given in the appendix (page 370) to the *Report of the Copyright Commission* (London, 1878). The salient dates in this table are these:

1637. — Star Chamber Decree supporting copyright.

1643. — Ordinance of the Commonwealth concerning licensing. Copyright maintained, but subordinate to political objects.

1662. — 13 and 14 Car. II, c. 33. — Licensing Act continued by successive Parliaments; gives copyright coupled with license.

1710. — 8 Anne, c. 19. — First copyright act. Copyright to be for fourteen years, and if author then alive, for fourteen years more. Power to regulate price.

1814. — 54 Geo. III, c. 156. — Copyright to be for twenty-eight years absolutely, and further for the life of the author, if then living.

1842. — 5 and 6 Vict. c. 45. — Copyright to be for the life of the author and seven years longer, or for forty-two years, whichever term last expires.

From Mr. Bowker's chapter on the *History of Copyright in the United States*, it is easy to draw up a similar table showing the development in this country:

1793. — Connecticut, in January, and Massachusetts, in March, passed acts granting copyrights for twenty-one years. In May Congress recommended the states to pass acts granting copyright for fourteen years, — seemingly a step backward from the Connecticut and Massachusetts statutes.

1785 and 1786. — Copyright acts passed in Virginia, New York and New Jersey.

1787. — Adoption of the constitution of the United States, authorizing Congress "to promote the progress of science and useful arts by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries."

1790. — First United States copyright act. Copyright to citizens or residents for fourteen years, with a renewal for fourteen years more if the author were living at the expiration of the first term.

1831. — Copyright to be for twenty-eight years, with a renewal for fourteen years more, if the author, his widow or his children are living at the expiration of the first term.

1856. — Act securing to dramatists stage-right; that is, the sole right to license the performance of a play.

1873-4. — The copyright laws were included in the Revised Statutes (sections 4948 to 4971).

From the exhaustive and excellent work of M. Lyon-Caen and M. Paul Delalain on *Literary and Artistic Property*[1] we see that France, now perhaps the foremost of all nations in the protection it accords to literary property, lagged behind Great Britain and the United States in taking the second step in the evolution of copyright. It was in 1710 that the act of Anne gave the British author a legal right independent of the caprice of any official; and as soon as the United States came into being, the same right was promptly confirmed to our citizens; but it was not until the fall of the ancient *régime* that a Frenchman was enabled to take out a copyright at will. Up to the eve of the revolution of 1789, French authors could do no more, say MM. Lyon-Caen and Delalain, "than ask for a privilege which might always be refused them" (page 8). As was becoming in a country where the drama has ever been the most important department of literature, the first step taken was a recognition of the stage-right of the dramatist, in a law passed in 1791. Before that a printed play could have been acted in France by any one, but thereafter the exclusive right of performance was reserved to the playwright; and at one bound the French went far beyond the limit of time for which any copyright was then granted either in England or America, as the duration of stage-right was to be for the author's life and for five years more. It is to be noted, also, that stage-right was not acquired by British and American authors for many years after 1791.

[1] La Propriété Littéraire et Artistique: Lois Françaises et Étrangères (Paris, Pichon, 1889, 2 vols.).

Two years after the French law protecting stage-right, in the dark and bloody year of 1793, an act was passed in France granting copyright for the life of the author and for ten years after his death. It is worthy of remark that, as soon as the privileges and monopolies of the monarchy were abolished, the strong respect the French people have always felt for literature and art was shown by the extension of the term of copyright far beyond that then accorded in Great Britain and the United States; and although both the British and the American term of copyright has been prolonged since 1793, so also has the French, — and it is now for life of the author and for fifty years after his death.

The rapid development of law within the past century and the effort it makes to keep pace with the moral sense of society — a sense that becomes finer as society becomes more complicated and as the perception of personal wrong is sharpened — can be seen in this brief summary of copyright development in France, where, but a hundred years ago, an author had only the power of asking for a privilege which might be refused him. The other countries of Europe, following the lead of France as they have been wont to do, have formulated copyright laws not unlike hers. In prolonging the duration of the term of copyright, one country has been even more liberal. Spain extends it for eighty years after the author's death. Hungary, Belgium and Russia accept the French term of the author's life and half a century more. Germany, Austria and Switzerland grant only thirty years after the author dies. Italy gives the author copyright for his life, with exclusive control to his heirs for forty years after his death; after that period the exclusive rights cease, but a royalty of five per cent on the retail price of every copy of every edition, by whomsoever issued, must be paid to the author's heirs for a further term of forty years: thus a quasi-copyright is granted for a period extending to eighty years after the author's death, and the Italian term is approximated to the Spanish. Certain of the Spanish-American nations have exceeded the liberality of the mother-country: in Mexico, in

Guatemala and in Venezuela the author's rights are not terminated by the lapse of time, and copyright is perpetual.[1]

To set down with precision what has been done in various countries, will help us to see more clearly what remains to be done in our own. It is only by considering the trend of legal development that we can make sure of the direction in which efforts toward improvement can be guided most effectively. For example: the facts contained in the preceding paragraphs show that no one of the great nations of continental Europe grants copyright for a less term than the life of the author and a subsequent period varying from thirty to eighty years. A comparison also of the laws of the various countries, as contained in the invaluable volumes of MM. Lyon-Caen and Delalain, reveals to us the fact that there is a steady tendency to lengthen this term of years, and that the more recent the legislation the more likely is the term to be long. In Austria, for instance, where the term was fixed in 1846, it is for thirty years after the author's death; while in the twin-kingdom of Hungary, where the term was fixed in 1884, it is for fifty years.

On a contrast of the terms of copyright granted by the chief nations of continental Europe with those granted by Great Britain and the United States, it will be seen that the English-speaking race, which was first to make the change from privilege to copyright and was thus the foremost in the protection of the author, now lags sadly behind. The British law declares that the term of copyright shall be for the life of the author and only seven years thereafter, or for forty-two years, whichever term last expires. The American law does not even give an author copyright for the whole of his life, if he should be so unlucky as to survive forty-two years after the publication of his earlier books; it grants copyright for twenty-eight years only, with a permission to the author himself, his widow or his children to renew for fourteen years more. This is niggardly when set

[1] Here again it may be noted that certain decisions in the United States courts, to the effect that the performance of a play is not publication, and that therefore an unpublished play is protected by the common law and not by the copyright acts, recognize the perpetual stage-right of any dramatist who will forego the doubtful profit of appearing in print.

beside the liberality of France, to say nothing of that of Italy and Spain. Those who are unwilling to concede that the ethical development of France, Italy and Spain is more advanced than that of Great Britain and the United States, at least as far as literary property is concerned, may find some comfort in recalling the fact that the British act was passed in 1842 and the American in 1831 — and in three-score years the world moves.

There is no need to dwell on the disadvantages of the existing American law, and on the injustice which it works. It may take from an author the control of his book at the very moment when he is at the height of his fame and when the infirmities of age make the revenue from his copyrights most necessary. An example or two from contemporary American literature will serve to show the demerits of the existing law. The first part of Bancroft's *History of the United States*, the history of the colonization, was published in three successive volumes in 1834, 1837 and 1840; and although the author has since revised and amended this part of his work, it has been lawful, since 1882, for any man to take this unrevised and incorrect first edition and to reprint it, despite the protests of the author, and in competition with the improved version which contains the results of the author's increased knowledge and keener taste.

At this time of writing (1890) all books published in the United States prior to 1848 are open to any reprinter; and the reprinter has not been slow to avail himself of this permission. The children of Fenimore Cooper are alive, and so are the nieces of Washington Irving; but they derive no income from the rival reprints of the *Leatherstocking Tales* and of the *Sketch Book*, reproduced from the earliest editions without any of the authors' later emendations.[1] Though the family of Cooper and the family of Irving survive, Cooper and Irving are dead themselves and cannot protest. But there are living American authors besides Bancroft who are despoiled in like manner. Half a dozen volumes were published by Mr. Whittier and by

[1] The emendations, having been made within forty-two years, are of course still guarded by copyright.

Dr. Holmes before 1848, and these early, immature, uncorrected verses are now reprinted and offered to the public as "Whittier's Poems" and "Holmes's Poems." Sometimes the tree of poesy flowers early and bears fruit late. So it is with Lowell, whose *Heartsease and Rue* we received with delight only a year or two ago, but whose *Legend of Brittany, Vision of Sir Launfal, Fable for Critics* and first series of *Biglow Papers* were all published forty-two years ago or more, and are therefore no longer the property of their author but have passed from his control absolutely and forever.

Besides the broadening of a capricious privilege into a legal right, and besides the lengthening of the time during which this right is enforced, a steady progress of the idea that the literary laborer is worthy of his hire is to be seen in various newer and subsidiary developments. With the evolution of copyright, the author can now reserve certain secondary rights of abridgment, of adaptation and of translation. In all the leading countries of the world the dramatist can now secure stage-right;[1] *i.e.* the sole right to authorize the performance of a play on the stage. Copyright and stage-right are wholly different; and a dramatist is entitled to both. The author of a play has made something which may be capable of a double use, and it seems proper that he should derive profit from both uses. His play may be read only and not acted, like Lord Tennyson's *Harold* and Longfellow's *Spanish Student*, in which case the copyright is more valuable than the stage-right. Or the play may be acted only, like the imported British melodramas, and of so slight a literary merit that no one would care to read it, in which case the stage-right would be more valuable than the copyright. Or the drama may be both readable and actable, like Shakspere's and Sheridan's plays, like Augier's and Labiche's, in which case the author derives a double profit, controlling the publication by copyright and controlling performance by stage-right. It was in 1791, as we have seen, that France granted

[1] Mr. Drone uses the word "playright," but this is identical in sound with "playwright," and it seems better to adopt the word "stage-right," first employed by Charles Reade

stage-right. In England, "the first statute giving to dramatists the exclusive right of performing their plays was the 3 and 4 William IV, c. 15, passed in 1853," says Mr. Drone (page 601). In the United States stage-right was granted in 1851 to dramatists who had copyrighted their plays here.

Closely akin to the stage-right accorded to the dramatist is the sole right of dramatization accorded to the novelist. Indeed, the latter is an obvious outgrowth of the former. Until the enormous increase of the reading public in this century, consequent upon the spread of education, the novel was an inferior form to the drama and far less profitable pecuniarily. It is only within the past hundred years, — one might say, fairly enough, that it is only since the Waverley novels took the world by storm, — that the romance has claimed equality with the play. Until it did so, no novelist felt wronged when his tale was turned to account on the stage, and no novelist ever thought of claiming a sole right to the theatrical use of his own story. Lodge, the author of *Rosalynde*, would have been greatly surprised if any one had told him that Shakspere had made an improper use of his story in founding on it *As You Like It*. On the contrary, in fact, literary history would furnish many an instance to prove that the writer of fiction felt that a pleasant compliment had been paid him when his material was made over by a writer for the stage. Scott, for example, aided Terry in adapting his novels for theatrical performance; and he did this without any thought of reward. But by the time that Dickens succeeded Scott as the most popular of English novelists the sentiment was changing. In *Nicholas Nickleby* the author protested with acerbity against the hack playwrights who made haste to put a story on the stage even before its serial publication was finished. His sense of injury was sharpened by the clumsy disfiguring of his work. Perhaps the injustice was never so apparent as when a British playwright, one Fitzball, captured Fenimore Cooper's *Pilot* in 1826 and turned Long Tom Coffin into a British sailor! — an act of piracy which a recent historian of the London theatres, Mr. H. B. Baker, records with hearty approval. The possibility of an outrage like this still exists in

England. In France, of course, the novelist has long had the exclusive right to adapt his own story to the stage; and in the United States also he has it, if he gives notice formally on every copy of the book itself that he desires to reserve to himself the right of dramatization. But England has not as yet advanced thus far; and no English author can make sure that he may not see a play ill-made out of his disfigured novel. Charles Reade protested in vain against unauthorized dramatization of his novels, and then, with characteristic inconsistency, made plays out of novels by Anthony Trollope and Mrs. Hodgson Burnett without asking their consent. But the unauthorized British adapter may not lawfully print the play he has compounded from a copyright novel, as any multiplication of copies would be an infringement of the copyright; and Mrs. Hodgson Burnett succeeded in getting an injunction against an unauthorized dramatization of *Little Lord Fauntleroy* on proof that more than one copy of the unauthorized play had been made for use in the theatre. It is likely that one of the forthcoming modifications of the British law will be the extension to the novelist of the sole right to dramatize his own novel.

II.

From a consideration of the lengthening of the term of copyright and the development of certain subsidiary rights now acquired by an author, we come to a consideration of the next step in the process of evolution. This is the extension of an author's rights beyond the boundaries of the country of which he is a citizen, so that a book formally registered in one country shall by that single act and without further formality be protected from piracy[1] throughout the world. This great and needful improvement is now in course of accomplishment; it is still far from complete; but year by year it advances farther and farther.

[1] "Piracy" is a term available for popular appeal but perhaps lacking in scientific precision. The present writer used it in a little pamphlet on "American Authors and British Pirates" rather by way of retort to English taunts. Yet the inexact use of the word indicates the tendency of public opinion.

In the beginning the sovereign who granted a privilege or at his caprice withheld it, could not, however strong his good will, protect his subject's book beyond the borders of his realm; and even when privilege broadened into copyright, a book duly registered was protected only within the state wherein the certificate was taken out. Very soon after Venice accorded the first privilege to John of Spira, the extension of the protection to the limits of a single state only was found to be a great disadvantage. Printing was invented when central Europe was divided and subdivided into countless little states almost independent, but nominally bound together in the Holy Roman Empire. What is now the Kingdom of Italy was cut up into more than a score of separate states, each with its own laws and its own executive. What is now the German Empire was then a disconnected medley of electorates, margravates, duchies and grand-duchies, bishoprics and principalities, free towns and knight-fees, with no centre, no head and no unity of thought or of feeling or of action. The printer-publisher made an obvious effort for wider protection when he begged and obtained a privilege not only from the authorities of the state in which he was working but also from other sovereigns. Thus when the Florentine edition of the *Pandects* was issued in 1553, the publisher secured privileges in Florence first, and also in Spain, in the Two Sicilies and in France. But privileges of this sort granted to non-residents were very infrequent, and no really efficacious protection for the books printed in another state was practically attainable in this way. Such protection indeed was wholly contrary to the spirit of the times, which held that an alien had no rights. In France, for example, a ship wrecked on the coasts was seized by the feudal lord and retained as his, subject only to the salvage claim.[1] In England a wreck belonged to the King unless a living being (man, dog or cat) escaped alive from it; and this claim of the crown to all the property of the unfortunate foreign owner of the lost ship was raised as late as 1771, when Lord Mansfield decided against it. When aliens were thus rudely robbed of their tangible posses-

[1] A. C. Bernheim, History of the Law of Aliens (N.Y. 1885), p. 58.

sions, without public protest, there was little likely to be felt any sense of wrong at the appropriation of a possession so intangible as copyright.

What was needed was, first of all, an amelioration of the feeling toward aliens as such; and second, such a federation of the petty states as would make a single copyright effective throughout a nation, and as would also make possible an international agreement for the reciprocal protection of literary property. Only within the past hundred years or so has this consolidation into compact and homogeneous nationalities taken place. In the last century, for example, Ireland had its own laws and Irish pirates reprinted at will books covered by English copyright. In the preface to *Sir Charles Grandison*, published in 1753, Richardson, novelist and printer, inveighed against the piratical customs of the Hibernian publishers. In Italy, what was published in Rome had no protection in Naples or Florence. In Germany, where Luther in his day had protested in vain against the reprinters, Goethe and Schiller were able to make but little money from their writings, as these were constantly pirated in the other German states and even imported into that in which they were protected to compete with the author's edition. In 1826, Goethe announced a complete edition of his works, and, as a special honor to the poet in his old age, "the *Bundestag* undertook to secure him from piracy in German cities."[1] With the union of Ireland and Great Britain, with the accretion about the kingdom of Sardinia of the other provinces of Italy, with the compacting of Germany under the hegemony of Prussia, this inter-provincial piracy has wholly disappeared within the limits of these national states.

The suppression of international piracy passes through three phases. First, the nation whose citizens are most often despoiled — and this nation has nearly always been France — endeavors to negotiate reciprocity treaties, by which the writers of each of the contracting countries may be enabled to take out copyrights in the other. Thus France had, prior to 1852, special treaties with Holland, Sardinia, Portugal, Hanover and Great

[1] G. H. Lewes, Life and Works of Goethe, p. 545.

Britain. Secondly, a certain number of nations join in an international convention, extending to the citizens of all the copyright advantages that the citizens of each enjoy at home. Third, a state modifies its own local copyright law so as to remove the disability of the alien. This last step was taken by France in 1852; and in 1886, Belgium followed her example.

The French seeking equity are willing to do equity; they ask no questions as to the nationality or residence of an author who offers a book for copyright; and they do not demand reciprocity as a condition precedent. Time was when the chief complaint of French authors was against the Belgian reprinters; but the Belgians, believing that the ship of state was ill-manned when she carried pirates in her crew, first made a treaty with France and then modified their local law into conformity with the French. These two nations, one of which was long the headquarters of piracy, now stand forward most honorably as the only two which really protect the full rights of an author.

Most of the states which had special copyright treaties one with another have adhered to the convention of Berne, finally ratified in 1887. Among them are France, Belgium, Germany, Spain, Italy, Great Britain and Switzerland. The adhesion of Austro-Hungary, Holland, Norway and Sweden is likely not long to be delayed. The result of this convention is substantially to abolish the distinction between the subjects of the adhering powers and to give to the authors of each country the same faculty of copyright and of stage-right that they enjoy at home, without any annoying and expensive formalities of registration or deposit in the foreign state.

The United States of America is now the only one of the great powers of the world which absolutely refuses the protection of its laws to the books of a friendly alien.[1] From having been one of the foremost states of the world in the evolution of copyright, the United States has now become one of the most backward. Nothing could be more striking than a

[1] If a foreign dramatist chooses to keep his play in manuscript, then the American courts will defend his stage-right; but the foreign dramatist is the only alien author whose literary property is assured to him by our courts.

contrast of the liberality with which the American law treats the foreign inventor and the niggardliness with which it treats the foreign author. In his *Popular Government* (page 247) the late Sir Henry Sumner Maine declared that "the power to grant patents by Federal authority has . . . made the American people the first in the world for the number and ingenuity of the inventions by which it has promoted the 'useful arts'; while on the other hand, the neglect to exercise this power for the advantage of foreign writers has condemned the whole American community to a literary servitude unparalleled in the history of thought."

BRANDER MATTHEWS.

THE ECONOMIC SCHOOLS AND THE TEACHING OF POLITICAL ECONOMY IN FRANCE.

A RECENT American writer, after justly praising the marked progress of economic science in Germany, expresses himself as follows concerning France:

> France has done almost nothing for the evolution of economic science since the outbreak of the French Revolution of 1789. Political economy has in France degenerated into a mere tool of the powerful class. Nothing is so calculated to fill one with despair for France as French political economy. Rabid socialism confronts cold-blooded, selfish political economy, and where is a common standing ground? There is so little economic liberalism in no other modern nation.[1]

This is a severe judgment; and, unfortunately for us, it is not merely an individual opinion. Many economists, not only in America but also in Europe, would be likely to express the same conclusion, although possibly in a milder form. It is a commonly accepted opinion in the scientific world that the study of economics in France is decidedly on the wane; that the French genius, which formerly took the initiative in so many fields, and which even in the domain of economics paved the way for Adam Smith, has become barren; and that her most distinguished economists are something like riding-school horses, well trained, but trained to move continually in the same circle.

With two or three exceptions, French authors are seldom quoted in recent economic works. An examination of the lists of authorities now usually appended to new publications will convince us of this fact. And if by chance a French name is mentioned, it is usually not in very flattering terms. Professor Ingram, in his *History of Political Economy*, gives only a very small place to the French. As for the German

[1] Ely, Introduction to Political Economy, p. 324.