

pealed ;* and it empowers the Lord Treasurer to make compensation out of the Consolidated Fund to those libraries for the loss of that privilege, which compensation is to be exclusively applied to the purchase of books.

* So that only five copies are now required to be delivered gratuitously for the use of public libraries.

CHAPTER XII.

THE MOTION OF SERGEANT TALFOURD FOR AN AMENDMENT OF THE COPYRIGHT LAWS IN 1837, AND THE PROCEEDINGS THEREON, TO THE ACCESSION OF HER PRESENT MAJESTY.

HAVING brought down this Sketch of the History of Literary Property thus far, it now remains for us to record the recent efforts which have been, and, we hope, still will continue to be made, to restore to authors and their heirs, some portion of that extended right in their works, which they possessed before the 'fatal gift' of the 8 of Anne, c. 19.

And as a question of this kind was little likely to arouse interest or awaken excitement—to confer present popularity or promise future—we must not seek for its mover amongst the leaders of party, either Ministerial or Opposition; but we must seek for one who, to great abilities should unite pure motives—who, to the voice of justice should sacrifice the cravings of ambition; one who should not only have the eloquence to persuade, but the judgment to suggest; one who, free from taint of party, might stand forth conspicuous on other grounds—on grounds of public esteem for public merit; who might advocate the claims of the great and the noble with a kindred spirit; and who, while he should have all the poet's sensibility to feel and lament the wrong, should also have all the advocate's knowledge and acuteness to propose the remedy.

Such a man was found in the author of *Ion*, the honourable

and learned member for Reading. In him, the rights of the greatest benefactors of mankind had an eloquent, learned, and judicious advocate.

On the 18th of May, 1837, Mr. Sergeant Talfourd moved for leave to bring in a bill to amend the law of Copyright, in a speech which was listened to by the House 'with a feeling of the most unmingled gratification.'* As the occasion is too recent to require us to enter fully into the topics of the speech, we will merely cite the following passages, giving the learned Sergeant's views on one or two points.

He thus adverts to the utter want of generous feeling they display, who seek to deprive genius of all substantial reward, because without it it will struggle for fame alone. "When the opponents of literary property speak of glory as the reward of genius, they make an ungenerous use of the very nobleness of its impulses, and show how little they have profited by its high example. When Milton, in poverty and in blindness, fed the flame of his divine enthusiasm by the assurance of a duration coequal with his language, I believe with Lord Camden that no thought crossed him of the wealth which might be amassed by the sale of his poem; but surely some shadow would have been cast upon 'the clear dream and solemn vision' of his future glories, had he foreseen that, while booksellers were striving to rival each other in the magnificence of their editions, or their adaptation to the convenience of various classes of his admirers, his only surviving descendant—a woman—should be rescued from abject want only by the charity of Garrick, who, at the solicitation of Dr. Johnson, gave her a benefit at the theatre which had appropriated to itself all that could be represented of Comus. The liberality of genius is surely ill urged for our ungrateful denial of its rights. The late Mr. Coleridge gave an example not merely of its liberality, but of its profuseness; while

* Speech of the Honourable Spring Rice.

he sought not even to appropriate to his fame the vast intellectual treasures which he had derived from boundless research, and coloured by a glorious imagination; while he scattered abroad the seeds of beauty and wisdom to take root in congenial minds, and was content to witness their fruits in the productions of those who heard him. But ought we, therefore, the less to deplore, now when the music of his divine philosophy is for ever hushed, that the earlier portion of those works on which he stamped his own impress—all which he desired of the world that it should recognize as his—are published for the gain of others than his children—that his death is illustrated by the forfeiture of their birth-right? What justice is there in this? Do we reward our heroes so? Did we tell our Marlboroughs, our Nelsons, our Wellingtons, *that glory was their reward, that they fought for posterity, and that posterity would pay them?* We leave them to no such cold and uncertain requital; we do not even leave them merely to enjoy the spoils of their victories, which we deny to the author—we concentrate a nation's honest feeling of gratitude and pride into the form of an endowment, *and teach other ages what we thought, and what they ought to think of their deeds, by the substantial memorials of our praise.*"

He then shows the injustice of the term of Copyright being dependent on the author's life. "There is something peculiarly unjust in bounding the term of an author's property by his natural life, if he should survive so short a period as twenty-eight years. It denies to age and experience the probable reward it permits to youth—to youth sufficiently full of hope and joy, to slight its promises. It gives a bounty to haste, and informs the laborious student who would wear away his strength to complete some work, which 'the world will not willingly let die,' that the more of his life he devotes to its perfection, the more limited shall be his interest in its fruits. It stops the progress of remuneration at the moment it is most needed, and

when the benignity of nature would extract from her last calamity a means of support and comfort to survivors. At the moment when his name is invested with the solemn interest of the grave—when his eccentricities or frailties excite a smile or a shrug no longer—when the last seal is set upon his earthly course, and his works assume their place among the classics of his country—your law declares that his works shall become your property; and you requite him by seizing the patrimony of his children.”—“The term allowed by the existing law is curiously adapted to encourage the lightest works, and to leave the noblest unprotected. Its little span is ample for authors who seek only to amuse; who ‘to beguile the time, look like the time;’ who lend to frivolity or corruption ‘lighter wings to fly;’ who sparkle, blaze, and expire. These may delight for a season, the fire-flies on the heaving sea of public opinion—the airy proofs of the intellectual activity of the age; yet surely it is not just to legislate for those alone, and deny all reward to that literature which aspires to endure.”*

In conclusion, the learned gentleman said: “I do not in truth ask for literature favour; I do not ask for it charity; I do not even appeal to gratitude in its behalf; but I ask for it a *portion, and but a portion, of that common justice which the*

* On a subsequent occasion, on the 25th of April, 1838, he again returns to this subject, and asks—“Is there any magic in the term of twenty-eight years? Is there any conceivable principle of justice which bounds the right, if the author survives that term, by the limit of his natural life? As far as expediency shall prevail—as far as the welfare of those for whom it is the duty and the wish of the dying author to provide, may be regarded by Parliament; the period of his death is precisely that when they will most need the worldly comforts which the property in his work would confer. And as far as analogy may govern, the very attribute which induces us to regard with pride the works of intellect, is, that they survive the mortal course of those who framed them—that they are akin to what is deathless. Why should that quality render them worthless to those in whose affectionate remembrance their author still lives, while they attest a nobler immortality?”

coarsest industry obtains for its natural reward, and which nothing but the very extent of its claims, and the nobleness of the associations to which they are akin, have prevented it from receiving from our laws."

Leave was given, without one dissentient voice; and on the 6th of June accordingly, was brought in "a bill to consolidate and amend the laws relating to copyright in printed books, musical compositions, acted dramas, and engravings, to provide remedies for the violation thereof, and extend the term of its duration." As this bill has been subsequently much altered, we shall not enter into its details; but merely mention its principle, which still remains the same, and which is to extend the term of copyright, and facilitate the means afforded for its protection. The period of extension proposed is for the author's life, and the term of sixty years, to commence from the day of his death.

It was brought forward rather late in the session, and the demise of the Crown intervening, it was impossible to proceed further with it. Accordingly on the 28th of June, on the question that the bill be committed, the learned Sergeant said, that the House having recognized the principle of the bill on the second reading, it was not his intention to proceed further with it; but having received various suggestions from various quarters on the subject, he should at the next meeting of Parliament bring forward a bill, which he hoped would be still more complete in its details than the present.

CHAPTER XIII.

THE PROCEEDINGS RESPECTING THE AMENDMENT OF
THE COPYRIGHT LAWS IN THE FIRST SESSION OF THE
PRESENT PARLIAMENT.

ACCORDINGLY, shortly after the meeting of the new Parliament,* the learned Sergeant moved for leave to bring in a bill similar to the one of last session, for amending the law of copyright. In this bill, the clauses relating to engravings were left out, as it was intended to bring in a separate bill to amend the law respecting sculpture, and the law respecting engravings was to be included in it. So also a clause respecting international copyright was left out, as it was to be the subject of a separate bill.†

Leave was again readily and unanimously given to bring

* On the 14th of December, 1837.

† The learned Sergeant thus described the state of international copyright, in his speech on the 18th May, 1837. "At present, not only is the literary intercourse of countries, who should form one great family, degraded into a low series of mutual piracies, not only are industry and talent deprived of their just reward, but our literature is debased in the eyes of the world, by the wretched medium through which they behold it. Pilfered, and disfigured in the pilfering, the noblest images are broken, wit falls pointless, and verse is only felt in fragments of broken music:—sad fate for an irritable race! The great minds of our times have now an audience to impress far vaster than it entered into the minds of their predecessors to hope for; an audience increasing as population thickens in the cities of America, and spreads itself out through its diminishing wilds, who speak our language, and who look on our old poets as their own immortal ancestry. And if this our literature shall be theirs; if its diffusion shall follow the efforts of the stout heart and sturdy arm in their triumph over the obstacles of nature; if the woods stretching beyond their confines shall be haunted with visions of beauty which our poets have created, let those who thus are softening the rugged-

in this bill ; but when it came to the second reading, a serious and formidable opposition had presented itself. There was a clause in it, providing that in cases where the author had assigned away his whole interest according to the existing law, the assignee should enjoy it for the period only that he had bought it ; and that the further term of sixty years from the author's death, should revert to the author or his heirs ; with a proviso, however, authorising the assignee to sell all such copies as he might have on hand at the death of the author. Now it would appear that by the practice of the trade, the term of Copyright was in reality generally prolonged beyond the legal term ; no respectable publisher, from motives of mutual convenience, printing upon another. But however this might answer their purpose among themselves, and be compatible with justice and equity, as far as they were concerned, it was far otherwise with regard to the author and the public, neither of whom profited by this tacit understanding. But the publishers feeling that if this Bill were passed, they would either, in the case of a valuable work, have to purchase the remainder of the term, or be prevented on the death of an author from enjoying this implied Copyright any longer, tried every means to oppose a measure which would deprive them of this source of profit. They put forth all the arguments that could be alleged against any further prolongation ; but unfortunately almost all their arguments applied equally to a term of Copyright at all. They were indeed chiefly those which were brought forward in the case of Millar against Taylor, and have been already discussed : such as the enhancing the price of books ; the capricious refusal on the part of authors, or their representatives, to allow books to be printed, &c.

ness of young society have some interest about which affection may gather, and at least let them be protected from those who would exhibit them mangled or corrupted to their transatlantic disciples."

In moving the second reading of the Bill,* the learned Sergeant said, that he only wished the House at that stage of the Bill, to affirm the principle of it, which was, 'that the present term of Copyright was much too short for the attainment of that justice which society owes to authors, especially to those (few though they might be) whose reputation was of slow growth and of enduring character;' and he desired the House to recollect that all the other parts of the Bill were mere questions of detail.

In this speech he thus feelingly and justly alludes to the reward due to an author: "We cannot decide *the abstract question between genius and money*, because there exist no common properties by which they can be tested, if we were dispensing an arbitrary reward; but the question, how much the author ought to receive, is easily answered—so much as his readers are delighted to pay him. When we say that he has obtained immense wealth by his writings, what do we assert, but that he has multiplied the sources of enjoyment to countless readers, and lightened thousands of else sad, or weary, or dissolute hours? The two propositions are identical, the proof of the one at once establishing the other. Why then should we grudge it any more than we would reckon against the soldier, not the pension or the grant, but the very prize-money which attests the splendour of his victories, and in the amount of his gains proves the extent of ours? Complaints have been made by one in the foremost rank in the opposition to this bill, the pioneer of the noble army of publishers, booksellers, printers, and bookbinders, who are arrayed against it, that in selecting the case of Sir Walter Scott as an instance in which the extension of Copyright would be just, I had been singularly unfortunate, because that great writer received during the period of subsisting Copyright, an unprecedented revenue from the imme-

* On the 25th of April, 1838.

diate sale of his works. But, Sir, *the question is not one of reward—it is one of justice.* How would this gentleman approve of the application of a similar rule to his own honest gains? From small beginnings this very publisher has, in the fair and honourable course of trade I doubt not, acquired a splendid fortune, amassed by the sale of works the property of the public—of works whose authors have gone to their repose from the fevers, the disappointments, and the jealousies which await a life of literary toil. Who grudges it to him? Who doubts his title to retain it? And yet this gentleman's fortune is all, every farthing of it, so much taken from the public in the sense of the publisher's argument; it is all profit on books bought by that public, the accumulation of pence which, if he had sold his books without profit, would have remained in the pockets of the buyers. On what principle is Mr. Tegg to retain what is denied to Sir Walter? Is it the claim of superior merit? Is it greater toil? Is it larger public service? His course, I doubt not, has been that of an honest laborious tradesman; but what have been its anxieties, compared to the stupendous labour, the sharp agonies of him whose deadly alliance with those very trades whose members oppose me now, and whose noble resolution to combine the severest integrity with the loftiest genius, brought him to a premature grave—a grave which, by the operation of the law, extends its chillness even to the result of those labours, and despoils them of the living efficacy to assist those whom he has left to mourn him. Let any man contemplate that heroic struggle of which the affecting record has just been completed, and turn from the sad spectacle of one who had once rejoiced in the rapid creations of a thousand characters glowing from his brain, and stamped with individuality for ever, straining the fibres of the mind till the exercise which was delight became torture—girding himself to the mighty task of achieving his deliverance from the load which pressed upon him, and with

brave endeavour, but relaxing strength, returning to the toil till his faculties give way, the pen falls from his hand on the unmarked paper, and the silent tears of half-conscious imbecility fall upon it—to some prosperous bookseller in his country-house, calculating the approach of the time (too swiftly accelerated) when he should be able to publish for his own gain, those works fatal to life; and then tell me, if we are to apportion the reward to the effort, where is the justice of the bookseller's claim? Had Sir Walter Scott been able to see in the distance an extension of his own right in his own productions, his estate and his heart had been set free; and the publishers and printers who are our opponents now, would have been grateful to him for a continuation of labour and rewards which would have impelled and augmented their own."

The learned Sergeant thus concluded a very able and eloquent speech: "True it is that in many instances, if the boon be granted, the errors and frailties which often attend genius may render it vain; true it is that in multitudes of cases it will not operate, but we shall have given to authors and to readers a great lesson of justice; we shall have shown that where genius and virtue combine we are ready to protect their noble offspring, and that we do not desire a miserable advantage at the cost of the ornaments and benefactors of the world. I call on each party in this house to unite in rendering this tribute to the minds by which even party associations are dignified; on those who anticipate successive changes in society, to acknowledge their debt to those who expand the vista of the future, and people it with goodly visions; on those who fondly linger on the past and repose on time-hallowed institutions, to consider how much that is ennobling in their creed has been drawn from minds which have clothed the usages and forms of other days with the symbols of venerableness and beauty; on all, if they cannot find some common ground on which they may unite in

drawing assurance of progressive good for the future from the glories of the past, to recognize their obligation to those, the products of whose intellect shall grace, and soften, and dignify the struggle.”

Mr. Hume then addressed the House against the Bill, but his arguments only amounted to this: that the effect of the Bill would be to enhance the price of books, and so limit the scope of intellectual enjoyment, and the advancement of useful learning; and this line of argument he conceived he fully proved by a statement that Sir Walter Scott's ‘Lay of the last Minstrel,’ first sold for two guineas, and could now be had for 1*s.* 6*d.*; and ‘Marmion,’ first sold at 1*l.* 8*s.* 6*d.*, and could now be had for 10*d.** The Solicitor General opposed the Bill, calling it ‘a tax upon knowledge;’ and used the ungenerous argument that ‘because under the present system works were produced, it showed that somewhere there was a sufficient stimulus to exertion, and that for his part he would not consent to grant any further reward.’ A long debate ensued, in the course of which Sir Robert Inglis, Mr. D’Israeli, Mr. Milne, the Chancellor of the Exchequer, Mr. Wynne, and Lord Mahon, spoke in favor of the second reading; Mr. Pryme, Mr. Ward, Mr. Grote, the Attorney General, † Mr. Jervis, Sir Edward Sugden, and Mr. Warburton opposed it.

The only argument of any seeming weight used by the opponents of this measure, was that publishers act like merchants, whose principle it always is to replace their capital with profit as soon as possible; that they do not care what is to take place 60 years hence, and that at the same time that they would seek to have an absolute assignment of the whole

* The utter inconsequence of these facts, so far as the construction sought to be drawn from them, must be obvious to any one of the least discrimination.

† The Attorney General suggested that the Bill should be altered into one to empower the judicial committee of the Privy Council to grant an extension of the present period of Copyright, under particular circumstances, the same as is now done with regard to patents.

term, they would not give the author any more for the 60 years extra than they would do under the existing state of law; and therefore the benefit of this Bill would be solely to the publishers. *

The house then divided, when there were Ayes, 39, Noes, 34, making a majority of five in favour of a second reading; and, upon another division, with a majority of seven in favour, the Bill was ordered to be committed.

On the 10th of May, on the motion that the house go into committee on the Bill, Mr. Wakley opposed it in a very humorous and amusing speech, but one that did not bear in any decided manner on the question. He entertained the House with a statement of the very small sums Mr. Tegg had given for various works, novels, romances, and on general subjects, which had been brought out at about 10s. a volume, and had been sold to Mr. Tegg from 8d. to a 1s.; generally within three or four years after publication: though what this was meant to prove, or what argument to support, it is impossible to say. Several other members spoke; and on the house dividing, there was a majority of 52 in favor of the motion out of 180 members present.

On the 6th of June, the House, after some discussion, went into a committee, *pro formâ*, to allow of some amendments being made to the Bill, one of which was, with respect to works already published, not to extend the further term of 60 years from the death of the author, to cases where the author had parted with his whole interest in the work under the existing law. And this was done on account of the opposition of the publishers to the reverting clause in such cases, on the grounds that in purchasing a Copyright they calculated upon having an equal right to print it with the

* But this argument defeats itself; for if the further term were worth nothing in the publisher's estimation, it is not to be supposed he would refuse to purchase, because the grant of it was denied: if, again, it seemed valuable, of course he would be willing to give an equivalent for it.

rest of the world at the end of the present existing term, from which they would be by this debarred. Indeed, as before stated, by the custom of the trade they enjoyed a practical prolongation of the term of Copyright which would have been thus taken away.

At this advanced stage of the Bill, Lord John Russell, who had not taken any part in the preceding debates, expressed his disapprobation of any measure at all on the subject. There was nothing new or that requires any notice in the speech of the noble Lord; he merely deprecated legislation on so difficult a question as Copyright, and required more time for the consideration of the Bill. Mr. Sergeant Talfourd, after observing that he scarcely expected the noble lord thus at the eleventh hour to start objections, not to the details, but to the principle of the Bill, named the 20th of June as a sufficiently distant day for the further consideration of the report. The Bill was then printed with the proposed amendments,* which, besides the one above referred to, consisted in alterations as to the mode of bringing an action or obtaining an injunction for piracy—a bonâ fide abridgment was not to be considered as such; alterations in the mode of giving notice in case of reprinting a work, not reprinted within five years after the author's death, and being out of print; as to the expunging entry in registry-book wrongfully or injuriously made; and as to the Copyright in encyclopædias and periodicals: and a clause was inserted to provide for the proof of Copyright in Colonial Courts, and another for saving all rights existing at the time of passing this act.

On the 20th of June, when the further consideration of the report was again brought forward, it was proposed that owing to the immense mass of public business before the House, the great division of opinion on its details, and the hopelessness of expecting that the Bill could be passed that session,

* This amended Bill was the one before the House this last session, (1839.)

the further consideration of the report should be put off for three months. To which Sergeant Talfourd acceded, observing that he did so with great reluctance, as it had arrived at so advanced a stage ; but considering the extent of business, and the opposition which existed to some details, he did not think he should be sacrificing the interest of authors by acceding. The learned member observed, "The Bill has been remodelled, and when it appears in its amended form much of the present opposition to it will be removed. All the great publishers are favourable to it."

CHAPTER XIV.

THE INTERNATIONAL COPYRIGHT BILL, AND THE PROCEEDINGS ON SERGEANT TALFOURD'S BILL FOR THE AMENDMENT OF COPYRIGHT IN 1839.

IN the meantime a Bill 'for securing to authors, in certain cases, the benefit of an international Copyright,' was brought before Parliament; and, meeting with little opposition, was passed, and received the royal assent on the 31st of July, 1838.* It empowers her Majesty, by Order in Council, to allow to foreigners Copyright in their works here, where the government to which those foreigners belong allow to British subjects printing in their dominions similar equivalent rights. There was a discussion in the House of Lords on the third reading, as to a proposed amendment requiring copies of works to be delivered to the Universities, besides the copy required by the Bill to be furnished to the British Museum. But on its being observed that if we exacted this from foreigners, foreign governments might, with equal justice, demand copies of our works, and thus, by an extended system of international Copyright throughout the continent, perhaps a hundred copies might be required, which would be so heavy a tax as to defeat the intentions of the act, the proposed amendment was not persisted in.

In the debate that had occurred on Sergeant Talfourd's Bill, on the 25th of April, 1838, the Attorney General had sug-

* 1 & 2 Vict. cap. 59.

gested that the Bill should be changed into one giving power to the judicial committee to extend the term of Copyright in certain cases, similar to the manner in which the terms of patents were usually extended. And in accordance with this suggestion, on the 27th of July, Lord Brougham brought a Bill to that effect into the House of Lords. This Bill got as far as the third reading, which being proposed for the 6th of August, the Marquess of Lansdowne said 'he was not aware it had proceeded so far, and hoped it would be allowed to stand over for a day or two, in order that their lordships might make themselves acquainted with its details,' which was acceded to. It was put off from day to day till the 9th, after which day no further mention of it was made, owing to the impracticability of passing it that session.

Early in the last year (1839) Sergeant Talfourd, unwearied and persevering, again brought in a Bill to amend the Law of Copyright; and moved the second reading of it, on the 27th of February, in a speech, like the preceding, able, eloquent, and convincing.

It had been objected by some of the opponents, on former occasions, that there were no petitions from authors, seeking for a further extension of their Copyright; and that it was strange to ask for them a boon, which they had not sought themselves. This objection the learned Sergeant now removed, by presenting several petitions from authors to that effect; and in reference to it, he observed: "When I first solicited for those arguments the notice of this House, I thought they rested on principles so general, that the interests of those who labour to instruct and illustrate the age in which they live are so inseparably blended with all that affects its morality and its happiness, that the due reward of the greatest of its authors is so identified with the impulses they quicken — with the traits of character they mirror — with the deeds of generosity, of courage, and of virtue which they celebrate, and with the multitudes whom they delight and

refine, that I felt it was not for them alone that I asked the shelter of the law, and I did not wish to see them soliciting it as a personal boon."

Respecting the fears of the printers that if Copyright were extended, books would be dearer, fewer would be printed, fewer hands would be required, fewer presses set up, fewer types cast, fewer reams of paper needed, the learned Sergeant observes: "Now, if there were any real ground for those busy fears, they would not want facts to support them. In the year 1814, when the term of Copyright was extended from fourteen to twenty-eight years, the same class expressed similar alarms. The projected change was far more likely to be prejudicial to them than the present, as the number of books on which it operated was much larger; and yet there is no suggestion in their petitions, that a single press remained unemployed, or a paper-mill stood still; and, indeed, it is matter of notoriety, that since then, publications have greatly multiplied, and that books have been reduced in price with the increase of readers."

After alluding to the petitions from authors, he says: "Now, I ask, is there no property in these petitioners worthy of protection? 'No,' said, and will say, some of the opponents of this Bill; 'none. We think that from the moment an author puts his thoughts on paper, and delivers them to the world, his property therein wholly ceases.' What! has he invested no capital? embarked no fortune? *If human life is nothing in your commercial tables—if the sacrifice of profession, of health, of gain is nothing, surely the mere outlay of him who has perilled his fortune to instruct mankind, may claim some regard!* Or is the interest itself so refined—so ethereal—that you cannot regard it as property, because it is not palpable to sense or to feeling? Is there any justice in this? If so, why do you protect moral character as a man's most precious possession, and compensate the party who suffers in that character unjustly by damages? Has this possession any ex-

istence half so palpable as the author's right in the printed creation of his brain? I have always thought it one of the proudest triumphs of human law that it is able to recognize and to guard this breath and finer spirit of moral action—that it can lend its aid in sheltering that invisible property which exists solely in the action and affection of others, and, if it may do this, why may it not protect him in his right—those words which, as well observed by a great thinker, are, ‘after all, the only things that last for ever?’”

As to the enhancing the price of books:—“But grant the whole *assumption*—grant that if Copyright be extended, the few books it will affect will be dearer to the public by the little the author will gain by each copy—grant that they will not be more correct or authentic than when issued wholesale from the press; still is there nothing good for the people but cheap knowledge? Is it necessary to associate with their introduction to the works of the mighty dead, the selfish thought that they are sharing in the riot of the grave, instead of cherishing a sense of pride that, while they read, they are assisting to deprive the grave of some of its withering power over the interests of survivors? But if it were desirable, is it possible to separate a personal sympathy with an author from the young admiration of his works? We do not enter into his labours, as into some strange and dreamy world, raised by the touch of a forgotten enchanter; the affections are breathing around us, and the author being dead, yet speaks in accents triumphant over death and time. As from the dead level of an utilitarian philosophy no mighty work of genius ever issues, so never can such a work be enjoyed except in happy forgetfulness of its doctrines, which always softens the harshest creed. But I believe that those who thus plead for the people, are wholly unauthorized by their feelings; that the poor of these realms are richer in spirit than as their advocates understand them; and that they would feel a pride in bestowing their contributions in the expression of

respect to that great intellectual ancestry, whose fame is as much theirs as it is the boast of the loftiest amongst us.”

The learned Sergeant thus concluded: “I have been accused of asking you to legislate ‘on some sort of sentimental feeling.’ I deny the charge; the living truth is with us, the spectral phantoms of depopulated printing-houses and shops are with our opponents. If I were here beseeching indulgence for the frailties and excesses which sometimes attend fine talents — if I were appealing to your sympathy on behalf of crushed hopes and irregular aspirations, I might justly thus be charged. Not for the wild, but for the sage; not for the perishing, but for the eternal; for him who, poet, philosopher, or historian, girds himself for some toil lasting as life — lays aside all frivolous pursuits for one virtuous purpose, that when encouraged by that ‘All hail hereafter,’ which shall welcome him among the heirs of fame, he may not shudder to think of it as sounding with hollow mockery in the ears of those whom he loves, and waking sullen echoes by the side of a cheerless hearthstone: for such I ask this boon, and through them for mankind; and I ask it in the confidence with the expression of which your veteran petitioner, Wordsworth, closes his appeal to you,—‘*That in this, as in all other cases, justice is capable of working out its own expediency.*’”

Some debate then ensued: Mr. O’Connell, Sir Robert Inglis, and the Chancellor of the Exchequer, supported the second reading; Mr. Hume, Mr. Warburton, Mr. Baines, and the Solicitor General, opposed it. No new arguments were used against the bill except this: Mr. Warburton remarked that under this act, “It would be impossible to republish old works without a tedious, expensive, and troublesome process, including an application to the Court of Chancery, to say nothing of its imposing upon publishers an obligation from which persons in other trades were exempt; that of giving

public notice of the speculations in which they were about to engage; and that would surely be hardly fair when other persons in business were allowed to keep their operations secret." He also urged that in works requiring a considerable time, and where expense must likewise be encountered, it was likely that authors would receive advances, and part with their works to the publishers altogether.—“The object of the author, as of the publisher, is to obtain immediate advances; and is it possible, by any arrangements we can make under this Bill, to prevent authors, first from receiving their advances, and then parting with the work altogether? Is the author likely, in that case, to make a much better bargain than he does at present? By no means. While, by his doing so he, or rather the legislature which permits it, will be depriving the public of what they are fairly entitled to, and to which they certainly have a stronger claim than the publisher, to whom the additional pecuniary benefit, should any arise, must fall.” The Solicitor General reiterated in more unequivocal terms his design to reduce authors to what was not inappropriately termed by another member, ‘a work-house allowance.’ “My own opinion,” said the learned gentleman, “is that books should be had for the benefit of the public at the lowest possible prices; and therefore *no greater inducement should be held out to authors* than may be necessary for securing the production of the desired works. I can never bring myself to support any measure which goes farther than to give authors *the minimum* of inducement to produce their works.”

The House divided, when there was a majority of 36 out of 110 members present in favour of the second reading; and the Bill was committed for Wednesday the 10th of April.

It was put off from day to day till Wednesday the 1st of May, when on the question that the House should go into Committee on the Bill, a most vexatious and unusual course

of opposition was taken. Messrs. Warburton and Wakley, and a few others, persisted in repeatedly moving adjournments; and although considerable indignation was manifested by a large majority of the House at this unwonted exercise of a proper privilege which the minority have to prevent surprise; they divided the House, with decreasing numbers, no less than twenty times, and so far gained their object, that little progress was made with the Bill, the four first clauses only being agreed to. The pretext for this conduct was, the Bill being brought forward on a Wednesday night; although it was impossible to get any other night, from the state of the public business.

As the same conduct was again threatened unless the Bill was brought forward on some other night in the week, which could not be done, it was put off from day to day till the 8th of July, when Sergeant Talfourd, on the order of the day being read for the House to go into Committee on the Bill, said that 'considering the opposition with which the Bill was threatened, and the state of the public business at this late period of the session, however anxious he and the party with whom he acted, were to proceed with it, they could not entertain any reasonable hope of carrying the Bill through the House of Commons at such a period, and asking the House of Lords to proceed to legislate on it.' He therefore would not occupy the time of the House any further with it at this time, but 'he should be ready to renew his struggle with the honourable member for Bridport at the earliest possible period of the next session.'

CHAPTER XV.

OBSERVATIONS ON SERGEANT TALFOURD'S BILL.

HAVING in this slight sketch brought down the history of Copyright to the present period ; having traced its recognition from the earliest time when such a property could exist, in the exclusive privileges, decrees of Star Chamber, ordinances and Acts of Parliament, usages and by-laws of the Stationers' Company, and in the universal and unrefuted opinion entertained at the time of passing the 8 Anne, c. 19, and solemnly and legally confirmed by the decision of the Court of King's Bench in the case of Millar against Taylor ; having shown that the statute of Anne is not to be held as abrogating that common-law right, and that the subsequent judgment of the House of Peers, reversing the decision of the King's Bench, is not to be considered as a sound construction ; having detailed all the measures that have been subsequently adopted, either in diminution or increase of the interest of an author in his copy, down to the present moment, it remains for us to notice the objections which have been urged against the plan now proposed by Mr. Sergeant Talfourd.

The arguments against Sergeant Talfourd's Bill are : that the proposed extension of term will be profitless to the author, indifferent to the publisher, and injurious to the public. It will be profitless to the author, because it will affect only one case out of five hundred ; and in that one case the author will most likely have parted with his whole interest to

the bookseller. It will be indifferent to the publisher, for he will make his calculations either with or without reference to the future term ; and either way, on the principles on which his present trade is conducted, will only have to blame his own want of foresight or fortune. And it will be injurious to the public, because the only works that it will affect, will be those which it is most desirable should be circulated in a cheap form ; namely, works of sterling merit, which outlive the ephemeral productions of the day, and by the perusal of which, mankind become wiser and more useful members of society.

But these arguments, however specious they may seem, are futile. For although it were granted that the proposed extension would affect only one case out of five hundred ; if such be the proportion of works of real merit to the number of trifling performances, it is all that is sought to be obtained. For the object of the Bill is not to give a greater value to the light and trivial productions of the day, which either reap a sufficient and quick reward from their admirers, or fall with well merited contempt into oblivion ; but to secure to authors of genius and learning—whose works, although they become the classics of the country, often make their way but slowly into public favour—some slight pecuniary advantage, by extending their Copyright for a further period, at the very time it has commenced to be valuable, and to repay them for their long and unceasing labours. And although such cases are by their very nature rare, their infrequency forms no reason for treating them with neglect. And it is no sound argument against the extension, were it even the case, that the author may have assigned away his whole interest in his works ; for such a line of reasoning would equally have applied in 1814, to the extension to 28 years certain of the term of Copyright. But experience has shown that it is not by any means an unusual practice for authors, even under the present law, to dispose of their works for an edition only,

or for a certain term of years, with an interest reverting back to themselves. And indeed the opponents of this Bill use an argument that contradicts itself, when they assert that a bookseller will regard the future term as not worth buying, and therefore will give no more for the extended term than he does at present; and yet, with the same breath, say, that he will insist on having what is thus, according to them, an utterly valueless privilege.

Then as to the objection that it will injure the public. The public can have no right to demand that any one should dedicate his life *gratuitously* to their service. Therefore authors ought to have a reward, and the only question is as to its amount; whether the reward that shall be given to those who instruct, shall be less than to those who amuse mankind: whether we shall caress and enrich the contributors to the pleasure of the moment, and neglect and deprive of their just property, those who dedicate themselves to enlighten not only the present race, but posterity. For such is the state of the present law. Man is slow to acknowledge reason, and inattentive to the voice of wisdom; and when at last he does bow to their precepts, and admit their force, he at the same time proclaims that the reward so long withheld shall not continue; but, in most instances, cease almost with its first existence. What must be the effect of such conduct as this, but to make authors fall in with the follies and humours of the age; and as the future offers them no reward, look only to the approbation of the present?

But grant even, with Lord Camden, that genius for itself would spurn every sordid consideration that should interfere with its flight, or deaden the elastic energy of its pinion; yet could it, or ought it, to disregard those links that attach it to the earth? Has an author no social ties? Has he no children who look to him for their advancement; no wife who clings to him for support? Is he to take upon himself the heavy moral responsibility of neglecting their interests for

what, he may at moments accuse himself, is after all but a craving for vain glory? Is he to devote his whole energies, his talents, his life; is he to experience the misgivings, the unceasing mental anxiety, the intellectual toil; is he to put aside pleasure, interest, and passion, and apply himself through sickness and pain, through fast and vigil, through the sleepless night and the care-worn day, to the composition of a work which shall delight and instruct his own and future ages, for an unthankful and ungracious public, who, whilst they greedily snatch at the fruit of his labours, refuse grudgingly the small recompence which might rescue himself or his children from poverty and misery?

But it is far from clear that this injury to the public, which it is said the extension of Copyright will occasion, is not an ideal one. For it is only founded on the supposition that books will be made dearer by the change, which, at the best, is but problematical. At all events, the difference in price will be but trifling; for now that within late years the class of readers has become so increased, it is the publisher's object to sell his books at the cheapest possible rate; it being a recently yet universally recognized maxim in trade, that a large sale and a low profit are better than a limited sale and a high one. Therefore all that the public will have to give more for a book, under an extended period of Copyright, than they do at present, will be the proportion of the sum paid to the author for the Copyright.* And accordingly, as the book is more valuable and useful to the public, they will have to pay less for it; since a greater number of copies can be printed at once, and a less sum charged on each, will remunerate the author. So that whilst this bill will not affect the ordinary run of works at all, it will afford protection to works

* I find I am fully borne out in this view, by the statements made by an eminent American bookseller, who has published some very excellent remarks on the subject,—Mr. Nicklin of Philadelphia; although I am sorry to find he is, like most Americans, opposed to a system of international copyright, at least as far as regards the reprinting in the United States the works of British authors.

of real merit and worth, and, in proportion to their merit and to the desire of the public for their perusal, they will cost the public less and reward the author more.

The arguments brought forward by the opponents of the bill, on this subject, obviously contradict one another. With one breath they urge against this measure, that no works will be benefited by it; with the next, they draw a moving picture of the evils that will ensue from it, by enhancing the price of books.* As this line of reasoning is contradictory, so is that inconsequent, in which it is attempted to draw an inference, from the difference of the price of certain books now, from what they were first published at, that it is the effect of Copyright to keep books at excessive prices. For it must be apparent to every one, that as the number of readers has greatly increased of late years, the practice of cheap editions has become more universal; and that the moderate price at which they are now sold, is owing principally to the greater demand for them, and the lessened expenses of large editions.

But, important as it is that the public should have good and useful works at a moderate price, it is equally so that they should have them correct and free from error. And how does the present law bear upon this point? Most injuriously; for an author may considerably alter and amend his

* Mr. Tegg, a great opponent of this measure, has these remarkably inconsistent statements in his petition to the House. He says, "most of the scenes about, and subjects on which, books are written, are in the course of continual change, so that *extension of Copyright would be of no service to authors in general; for none would benefit by it, but those whose works are of an unchangeable character — such as chiefly poets and novelists.*" And then submits to the House, "that the national advantages of literature to the country, by facilitating *instruction, supplying historical and scientific information, inculcating just, honourable, and religious principles, and affording a refined species of entertainment, would be counteracted, and the immense efforts to extend education partially frustrated, by the measures proposed by Sergeant Talfourd.*" Appendix to Seventh Report on Public Petitions. (27th Feb.—1st March, 1839.) No. 187.

Did it never occur to this gentleman, that he could not at the same time as-

work by after experience; and when he does, the Copyright may have expired in his unamended and first edition, but not in the one that has had the benefit of his more mature wisdom, and the first be issued again to the world with all its faults and errors; which could not be the case, if the Copyright in the work still remained for some period after the author's decease.

Therefore, inasmuch as an extension of Copyright could only confer a reward upon those whose works richly deserve it; as it would be a reward conferred solely by the free-will of the public; as it could not affect works of transient or temporary interest, neither raising nor lowering their price, but only those of standard and sterling merit; as it would be difficult in any other manner to reward literary effort so well and justly as by making it wholly dependent on the voluntary contributions of the public; as by the existing law, the remuneration for standard works of history, religion, and science is notoriously inadequate compared with the sums given for light and trifling pieces, which please for the moment; and as any measure which should make the author dependent on the pleasure of a particular tribunal for a further reward, would be an insufficient, unsatisfactory, and unjust mode of proceeding, since none can set a price upon talent, or estimate, by commercial or mathematical scales, the exact value of intellectual exertion;—for one and all of these reasons, it is to be hoped that the principle of Sergeant Talfourd's bill may be passed, and England will no longer be to be reproached as the tardiest of nations in according justice to authors.†

sume that this bill would only affect "poets and novelists," and yet trace to its wide influence all the above evils? That he could not at one moment censure it as benefiting few authors, and therefore applying to few works, and the next, as applying to all works, and therefore injuring the public?

† The term of Copyright is greater in almost every other country than in England. See the Appendix.

I say, the principle, because it is not at all clear that the extension of the Copyright should be to exactly sixty years from the death of the author; indeed, as a matter of opinion, I am almost inclined to think that two-thirds of that period, or perhaps even less, would be sufficient.

Besides, there are some of the details of the bill that might be altered, and no doubt will be, before it is passed into a law; such, for instance, as the anomaly which has been objected to it, with regard to works already published, of giving to an author who has retained the whole, or a portion of the interest in his own hands, the benefit of the extension of the term; but denying it in the case of another, who, not having the same means or good fortune, has assigned away all his interest. There is no other reason for this distinction, but because in such cases, the assignee cannot claim the future term, for which he has paid nothing; and it cannot be given to the author, for it would be unjust to the assignee, since the assignee, in making his bargain with the author, calculated with reference to the present law, that he should have the same right, at the expiration of his term, to print it, as the rest of the world, and a greater, practically, by the custom of the trade amongst booksellers; and therefore it would not be fair to compel him, either to pay for the future term, or forego the advantages he would otherwise have had when his Copyright expired, in publishing the work under the present law. But what objection can there exist to a clause being framed, giving the author or his heirs, in such cases, a power to assign the future interest *only to one party*, namely, to the assignee of the original term? In the case of a work of merit, the interest in which has been wholly assigned, the publisher to whom it is assigned would be very willing to purchase the extended period on terms very advantageous to the author; and it would be hard, under such circumstances, where it could injure no one, that the author should be deprived of the benefit, merely because he had not retained a

share of the interest in his own hands. And where the author and the assignee could not agree upon terms, and no such future assignment was made, then the Copyright should expire, as it would otherwise do, under the present existing law. Those who are captious enough to take extreme objections, may urge that a case might arise, where a bookseller might capriciously refuse to purchase, except at terms extremely disadvantageous to the author; and thus the author would be left wholly at his mercy. But those who would urge this, forget altogether, that without such a clause, no author at all, who has assigned away the whole of his interest, can receive any benefit by the bill as it now stands.

And again, a clause, allowing parties to print a book when out of print for five years, on advertising publicly their intention so to do, and suffering a year from the date thereof to elapse, is much objected to, on account of the difficulties it is supposed in practice it would present; but it might perhaps be altered into a clause to the same effect, without the same inconveniences. For instance, if proof of demand made at the house of the publishers of the last edition, once every year, for three, four, or five successive years, with the same answer, that it was out of print, (or any other proof of a similar nature, that the work had been out of print for four or five years,) should be held to be a *prima facie* case, to entitle a party to reprint it, and throw the onus of showing that he was aware that it was not out of print, or that a new edition was preparing, on the author or his assignee. Such a clause would protect the owner of Copyright; at the same time it would not check enterprize, by obliging publicity to be given to a speculation of a purely mercantile nature, and thus awakening competition. It is absurd to contend, as has been done, that a publisher, not wishing to reprint himself, nor that others should reprint, might keep some copies by him to show that it was not out of print; for if the work was