# REMARKS

ON

THE SPEECH

OF

# SERGEANT TALFOURD,

ON MOVING FOR LEAVE TO BRING IN

## A Bill to Consolidate the Laws relating to Copyright,

AND

TO EXTEND THE TERM OF ITS DURATION.

BY THOMAS TEGG,

BOOKSELLER.

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TO THE RIGHT HONOURABLE

# SIR ROBERT PEEL, BART.

Sir,

Your connexion with education and literature, as Lord Rector of the University of Glasgow, induces me to take the liberty of addressing to you the following remarks on the published speech of Sergeant Talfourd, in favour of the bill he has introduced into Parliament for an alteration in the law of Copyright.

The position you hold in the House of Commons renders your opinion, on this and every other subject discussed there, of pre-eminent importance; and I feel that the statements I have the honour to lay before you will have their full bearing on the measure of Sergeant Talfourd, if they pass the ordeal of your investigation.

I have the honour to be,

Sir,

Your very faithful and obedient servant,

THOMAS TEGG.

# REMARKS, &c.

THE peculiar branch of the publishing business in which I am engaged, offers views respecting the question of Copyright which have not, perhaps, presented themselves to Sergeant Talfourd, and many other Members of the House of Commons; otherwise I think that the very important alteration of the law of Copyright, proposed by the Bill of the learned Sergeant, would have been met by some startling objections.

It appears to me, that the learned Sergeant is wrong in the very basis of his argument. I conceive that the end proposed by the law of Copyright* is the same as that in the case of Patents for mechanical inventions,

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* My remarks apply to the law as it stands and to the principles on which it is established. It is useless to argue about that which, by the showing of the learned Sergeant, the Judges have solemnly decided not to be law.

The learned Sergeant is of course aware that Pope took out a patent for the translation of the Odyssey; and at the time I commenced business, it was not uncommon for booksellers to take out patents for new books.

and new processes in the arts,—namely, public advantage; not individual reward. The temporary monopoly is offered, in either case, as the means of repayment for the study, skill, and talent, and also for the employment of capital, requisite for attaining that public benefit which the thing produced, whether literary, scientific, or mechanical, is calculated to afford; and it would be contrary to just principles, and contrary to the practice in any case where the public interest is concerned, to offer a rate of payment beyond what is sufficient for calling forth the labour, research, and talent necessary for its production.

The same qualities of mind are exerted in mechanical inventions and scientific discoveries, as in literary composition; and very often—generally indeed—there is great previous expense in apparatus, models, &c.; but the reward in *those* cases is limited to fourteen years' monopoly, and that is clogged with an expense of about £450 in procuring patents for England, Scotland, and Ireland; while, in the case of literature, the monopoly takes place at once on entering the publication at Stationers' Hall, and lodging a certain number of copies of the work; and, by the *existing* law, endures for twenty-eight years, and for the life of the author, should he survive that term.

It may be thought, perhaps, that literary productions have a higher and more important influence on

the public than mechanical inventions, and emanate from minds of a superior rank, and require a longer course of previous study; but, on the other hand, it is to be considered, that the mechanical or scientific improvement operates with infallible certainty for the public good, while a literary production may be either wholesome or pernicious. It must also be considered, that all the most positive and apparent wants of mankind have been already supplied by machinery and processes, more or less simple, the fruits of ages of study and contrivance; so that any new advance must be the result of elaborate investigation, and combinations of an intricate, or, at any rate, not obvious nature. The steam-engine—the machinery for printing—for making blocks for shipping—that for spinning—weaving—lace-making—paper-making—the safety-lamp, and the calculating machine—are specimens of mental power that may vie with the most splendid efforts of genius in literature; and it is a great question whether civilisation is more promoted by literature than by those arts which conduce to the convenience and comfort of mankind.

It appears to me very difficult to support the doctrine, that literary labour is not sufficiently promoted by the present rate of public payment for it. The plough seems to be wrought with the greatest diligence in all the fields of literature, and with such suc-

cess, that authors and booksellers are only at a loss for subjects on which they can hope to excite the attention of the public. The learned Sergeant would do the literati of this country much more service by starting two or three new subjects for them to write down, than by obtaining an extension of the term of copyright; for ninety-nine out of the hundred writers know that sixty days, instead of sixty years, is the natural term of their intellectual progeny. Authors of great acquirements and talents do not want the stimulus of *additional* pecuniary encouragement: those of the highest class write, in many cases, from the hope of fame and professional distinction, but know also that they need not want pecuniary remuneration; and what advantage is it to the public to flog on the inferior artists?

" And force *them*, as it were, in spite
Of Nature and their stars, to write."

The learned Sergeant ought to be aware of the high scale of remuneration at present afforded to literary men by the competition of booksellers, and to appreciate also the glory that is awarded to them, and in which he himself is a sharer. "Death itself loses its terrors" (for the successful author) "when he considers that its "dominion extends only over a part of him; and that, "in spite of death and time, the rage of the elements, "and the endless vicissitude of human affairs, *he* is

" assured of an immortal fame among all the sons of " men."

It is not without surprise that I see the House of Commons so disposed to entertain the proposition of the learned Sergeant. The great advantage of literature is in its effects *on the public*, by facilitating their instruction, extending their information, enlarging their mental power, inculcating just, honourable, and religious principles, and affording a refined species of entertainment. Its operation in this way is eminently conducive to the public good, and would be best promoted by the unrestricted liberty of publication; so that it is for the interest of *the public* that the author's *monopoly* should not exceed that term that is sufficient to afford him compensation—in other words, induce him to write. Many striking instances might be adduced of the difference of price during the author's monopoly, and subsequent to the right of printing being opened to the public; *e. g.*

| | | | |
|---|---|---|---|
| *The Lay of the Last Minstrel*, published at | £2 | 2 | 0 |
| Now sold at - - - - - | 0 | 2 | 0 |
| *Marmion*, published at - - - | 1 | 11 | 6 |
| Now sold at - - - - - | 0 | 2 | 0 |
| *Bridgewater Treatises*, published in England, at - - - - - - | 7 | 15 | 0 |
| Sold in the United States, at - - | 1 | 2 | 0 |

*Clarendon's History of the Rebellion* is perpetual

copyright to the University of Oxford; were it not so, I should publish it at one-fifth of its present price.

The argument of the learned Sergeant reminds me of the old and celebrated legal decision, that spectacles were made for the nose; but I hope the House of Commons will, as they ought, protect *the public* interest, and more particularly so, by reason that the interest of the mass of authors would not be benefited by the uncalled-for extension which the learned Sergeant proposes; because most of the sciences and subjects about which books are written, are in the course of continual change, as may be judged from the following brief sketch, viz.—

EDUCATION.—Are there not new methods of instruction continually introduced? Do not the researches of scholars find something inaccurate, or redundant, or deficient, in existing school-books, which they correct, or remodel, or rewrite accordingly?

HISTORY AND BIOGRAPHY.—Is it not manifest that new mines of information are continually opened up, and that there is constantly much to correct, and much of fresh matter to communicate?

NATURAL PHILOSOPHY AND SCIENCE.—Has there not been a gradual march of discovery since the time of Lord Bacon, which in many instances makes the facts of one year mere historical records in the next? what chemical, or botanical, or even mathematical, copyright requires sixty years' protection?

GEOGRAPHY, COMMERCE, AND STATISTICS.—Have human affairs that stability to make it desirable for authors on those subjects to have sixty years' duration of their copyrights? Is it not rather necessary to write their books afresh almost every second year?

Are our LAWS like those of the Medes and Persians? or are they not in the course of annual change? and changes sometimes of the most extensive and fundamental character.

Do our Surgeons and Physicians lag in the career of experiment and discovery? or rather, do not the art and science of MEDICINE receive daily elucidation, and become established on more sound and accurate principles, both by investigations strictly in the line of the profession, and by the aid of chemical, electrical, and botanical discovery?

CRITICISM AND METAPHYSICS.—Without meaning to undervalue the labours of the authors on these subjects, I think the public would not trouble their heads whether the law gave them sixty or six hundred years' monopoly. I question whether the writers of reviews, magazines, annuals, and miscellanies of various kinds, do not think their accounts with the public closed for ever, when they receive their payment per sheet.

We hardly ever hear of reprints of TRAVELS, twenty-eight years after their publication.

DIVINITY—I apprehend that those who write on this subject have better objects in view than their own gains; and in this branch of publication that which is calculated to benefit the public, cannot be too promptly and cheaply diffused.

These facts are too obvious to have escaped the learned Sergeant, and it must be observed that they have compelled him to limit his instances of the hard fate and want of encouragement of authors to two classes, viz. Poets and Novelists, whose productions are born complete and unchangeable. "Paradise Lost," and "Don Quixote," are the same now as in the days of Cervantes and Milton; and it is my sincere hope that "Ion" and "Waverley" may enjoy as lasting admiration, and yield equal delight. I would not deny these classes of authors the full meed of reward, and I value their works too highly to be niggardly of encouragement; but the due measure of that is the question which the learned Sergeant has brought before the legislature, and I can really see no proper standard for deciding it, but the experience of public supply.

Now as to the *number* of novels and poems, I think that the learned Sergeant must admit that the market is not understocked. In bringing his proposition before the House of Commons, he was not backed by petitions from Circulating Libraries and Book Societies, complaining of paucity of new books. I

have not heard that Messrs. Colburn, Bentley, Saunders and Ottley, and Macrone, find a dearth of authors, pen in hand, ready to fit a novel to a fortunate title, whether the subject be ludicrous or horrible, sentimental or fashionable; and as for poetry, I question whether the learned Sergeant would not think it a hard doom to read all that the press brings forth, even with the present rate of encouragement. The *deficiency of supply* cannot be a ground for applying to the legislature; even the cheesemongers and trunk-makers complain no more than the booksellers and the public.

Would the learned Sergeant call upon the legislature to alter the existing law for the object of multiplying inferior books, of heaping up the mass of second and third rate literature? He is bound to show, not only that an author of superior merit has gone unremunerated, but that the reward offered, in addition to the stimulus of public applause, is insufficient to rouse superior men to the full exertion of their powers, before the House of Commons can grant the extension of monopoly he claims. But it is idle to talk of sustaining his application on such grounds: there is no fact more evident, prominent, palpable, than that literary labour was never so highly rewarded before in any age or country. *Education has immeasurably increased the number of readers within a few years*; the

taste for literature, the desire of knowledge, and the opulence of the country, cause people to buy books; it is a luxury in which the public have liberally indulged; and the notoriety afforded to new books by Reviews and Periodicals, renders it impossible for Sergeant Talfourd to point out any instance of an author's merits not having been appreciated and rewarded.

Sergeant Talfourd instances the neglect of Milton, but *that was the neglect of a former age*, of a different sort of community; and if the law had *then* been what Sergeant Talfourd proposes to make it, I beg to ask him whether Milton would have got five guineas more for his greatest of poems? And supposing the people of this country had remained in the same state, would his heir have got fifty pounds for the remaining copyright, twenty-eight years after the first publication? The historical fact respecting Milton has so little bearing on the question, that I wonder the learned Sergeant did not advert to the inference established by it, namely, that this illustrious man, when he meditated "to adorn his country by some great performance," when he wrought upon it with the divine fervour and energy of the true poet, had no thoughts of pecuniary reward; he laboured solely under the poetic impulse, exalted, as he tells us, with the pious hope to "justify the ways of God to men."

The case is parallel with Defoe. The learned Ser-

geant must be aware that in these days Defoe would have rivalled the most successful of modern authors in the extent of his gains. He was not only a genius, he also understood the whole craft of authorship and bookselling; but he lived among *a comparatively uneducated people*, and he wrote in a violent style on political subjects, when the press was in a degraded state; still, punished and unpaid, he did write, and who in these times of literary reward has produced works that will outlive those of Defoe?

Can the learned Serjeant shut his eyes to the great but recent effect of education? Immortal but unfortunate Burns lived forty years too soon for emolument, and he lived before his writings had made the English acquainted with the Scotch language; but has the higher scale of reward produced anything equal to him since?

I cannot help thinking the learned Sergeant is particularly unfortunate in quoting the case of Sir Walter Scott among the instances of unrewarded literary merit. Sir Walter enjoyed all those advantages which I have stated that the other authors alluded to by the learned Serjeant wanted, and the law was so altered in his time as to double the period of monopoly granted for the encouragement of literature; and it is really no more than fair to the public to go into his case with some

degree of detail, and to adduce his own evidence on the subject from authentic sources. The pecuniary situation of Sir Walter Scott's family has no proper bearing on this question. Sir Walter engaged in trade, and he was unfortunate in his trading speculations; he purchased unprofitable land, built an expensive house, and lived in a hospitable style, and he became insolvent; but to make his case an authority for the proposed alteration of the law, the learned Sergeant is required to show that Sir Walter was not induced to exert himself to the utmost as an author, and that he was not adequately remunerated for his literary labours.

Now as to the claim for additional remuneration for his works in the gross, I think if we had a jury of authors, with Homer himself for foreman, they would hardly bring a verdict of one shilling against the British public. The learned Sergeant, on the proof of a quarter of a million sterling profit, during the life of the author, would hardly expect the case to be sent to the jury. But what says Sir Walter himself? We all know now the history of the manuscript of Waverley; it was partly written and thrown by for several years: subsequently Sir Walter met with it by accident, and completed it, and having done so, sent John Ballantyne to offer it to Constable and Co., and we are told by Mr. Lockhart that Constable offered

700*l.* for it: this was refused, but with a hint that the author would take 1000*l.*, which was not given, and it was published for Sir Walter's private account.

Now here is an instance of an author in the full tide of success, at the very pinnacle of reputation, estimating his own work at 1,000*l.*; and I venture to say, that before the death of Sir Walter, that individual book produced not less than 10,000*l.* profit! to say nothing of the magic of its name. The success of this work showed Sir Walter a new road to fame—and paved with gold—and can the learned Sergeant say that after this he loitered on the way?—did he not write with an inexhaustible ink-horn, and a steel pen, till the public almost fancied there were six "authors of Waverley" in the field.

Few men have contributed more to the public enjoyment than Sir Walter Scott, but I think it will be recorded that he had the good fortune to live in an age and in a country so peculiarly favourable to literature, that no author from the creation of the world ever reaped so large a harvest of honour and emolument.

Mr. Coleridge and Mr. Wordsworth may probably deserve the encomiums of the learned Sergeant, but I, like the public at large, have not arrived at that maturity of poetical taste, to be fully sensible of their

beauties; and I rather think Mr. Talfourd's publisher, Mr. Moxon, would tell him that the admiration of that style of poetry is still confined to the gifted, or initiated, or enlightened *few*: the fault may not be in the poetry, but they who write for profit (and that is the question in debate, though, probably, these poets despised it) should remember, that Molière, who charmed, and still charms, all the world, always tried the effect of what he wrote upon the old woman. And I cannot help suspecting, that the heirs of Mr. Wordsworth will not find his admiring minority, or section of the public, increase very fast for some generations to come; at any rate, it is not worth while to alter the law for the chance of it.

But if, upon the general question, it appears not conducive to the interest of the public, and not necessary for the encouragement of literature, to lengthen the duration of copyrights, what are we to think of the measure of the learned Sergeant in other respects? He proposes to create a copyright, not now existing, in favour of the future families or representatives of authors—to give a new monopoly to those who have done nothing to create a claim to it, and who have never had reason to expect such a boon at the public expense. Can the learned Sergeant have thought seriously of this novel system of legislation? How is a Cyclopædia, an Annual Register, or any long set of books which have come out perio-

dically, like the Gentleman's or Philosophical Maga-zine, or the Edinburgh or Quarterly Review, to be sold by the publisher, when new copyrights are formed, as Sergeant Talfourd proposes, and attach to different parts of it? Or suppose a book made up like Pope's translation of the "Odyssey," or the second part of "Absalom and Achitophel," by private assistance, what confusion would result between the heirs of the authors? Then again, is it not the policy of legislation to limit entails, and simplify contracts? But the learned Sergeant is proposing to take the disposal of a man's property out of his own hands; and even if he have no relation, and cannot guess who may be his representative, to deprive him of the power to sell his property out and out. Will there be a clause in the bill, to give all Godsends, arising from the want of claimants for literary property, to the Literary Fund? Assuredly, the learned Sergeant does not show much respect for the discretion and judgment of his literary brethren.

There would also be a great injustice to booksellers in the plan proposed, by reason of the enormous expense they incur in advertising a work. The expense of making a book known, is much greater than the public, and, perhaps, than members of the House of Commons, have any idea of; and this all falls on the bookseller, who knows that the connexion he forms with the

book survives the term of the monopoly, and that he retains a sort of good-will property, after the expiration of the copyright, and generally the principal share of the subsequent sale. Nor is this all; if there be a probability of continued sale, the bookseller generally has the work stereotyped, and risks a large property in the plates, as I believe has been done with the works of Scott, Byron, Crabbe, and many others; but all this is by the bill of the learned Sergeant to be taken away from him: yet the booksellers are abundantly necessary to authors, of which I can produce the evidence of Sir Walter Scott, who says, in a letter to Miss Seward, lately published in his Life by Mr. Lockhart, "Though the account between an *indi-*
" vidual bookseller and such a man as Southey, may be
" iniquitous * enough, yet I apprehend that, upon the
" whole, the account between *the trade* and the authors
" of Britain at large, is pretty fairly balanced; and
" what these gentlemen gain at the expense of one class
" of writers, is lavished, in many cases, in bringing for-
" ward other works of little value. I do not know
" but this, upon the whole, is favourable to the cause
" of literature. A bookseller publishes twenty books,
" in hopes of hitting upon one good speculation, as a

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* An unfortunate word, and egregiously misapplied.

" person buys a parcel of shares in a lottery in hopes
" of gaining a prize—thus the road is open to all; and
" if the successful candidate is a little fleeced in order
" to form petty prizes to console the losing adventurers,
" still the cause of literature is benefited."

I would beg to submit that the British House of Commons has no need to undertake the care and management of the interests of literary men *all over the world*; and that it is premature to make laws for giving foreign authors copyright in their works here, without ascertaining whether those of our own country would obtain equal advantages abroad. The publications of British authors are immediately printed in various parts of the Continent, as well as in America; and the number of parties, as well as different states, interested in the beneficial trade arising from this, is so great, and the buyers, both British and foreign, so numerous, that I think it would be almost impossible to make arrangements to give copyright to British authors in foreign countries, and absolutely so to make it practically efficacious.

In any case an author of reputation can, by proper arrangements with booksellers in different places, secure a simultaneous publication, and a copyright in many different countries; but so far from co-operation in making the monopoly for British works more strict and more easily attained than at present, I think that we

should find great opposition to it in the United States. The local protection of their own authors is matter of general concern, and therefore of national legislation; but I think the States would consider the creation of a new description of copyright, in favour of foreigners, a matter to be decided by the state legislatures, and that *they* would universally reject a proposition so disadvantageous to the American public.

I have no objection to urge to the minor reforms proposed in the bill of Sergeant Talfourd, but hope I have succeeded in demonstrating that the serious alterations which he proposes in the law of copyright are as unreasonable, as they are unnecessary and uncalled for, and would be detrimental to the public interest, without promoting that of authors.

With respect to literature generally, I particularly wish to call attention to the immense number of readers created by the spread of education, and the public importance of furnishing them with books at a cheap rate; and that this cannot result from monopoly I think is sufficiently manifest from the fact I before noticed with respect to the *Bridgewater Treatises*, namely, that in this country, where the price is kept up by the existing monopoly, they cannot be obtained under seven pounds fifteen shillings; while in America they are sold for one pound two shillings.

I apprehend that there is little chance of this bill proceeding in the present Session of Parliament; and if revived at any future period, would recommend the following title to be substituted; viz.

A BILL, WITH AN EX POST FACTO OPERATION, TO ENCOURAGE CERTAIN BRANCHES OF LITERATURE, AND TO ENHANCE THE PRICE OF BOOKS TO THE PUBLIC.

Ex Bibl
7/4/24

THE END.

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