

Who Owns Your Letters?

The Paper Belongs to You but Not the Message

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NO matter how unsentimental we may think we are, or how interested in worldly good, almost every one of us treasures and preserves through the years a few precious articles with a personal meaning, a near-silver medal won at school, a tin-type of one's first sweetheart, a keepsake from a parent. And, most highly prized of all, letters.

Perhaps some of these letters are from persons of importance or prominence, possibly dating the pre-fame of the senders. Let us suppose you have decided, for one reason or another, to dispose of these letters. The big question, however, is: what have you got that's salable?

Take the case of Reginald Roe, who with ardor exceeding prudence, takes pen in hand and sets down in language warm and/or daffy his devotion to Pansy Doe. It's the popular belief that Pansy, if it suits her mood, can sell Reginald's letters to a yellow journal and cash in on their publication. In fact the threat of exposing a former suitor's emotional imbecilities is an old, common, and lucrative source of blackmail.

But if Reggie is well advised, he'll call the bluff, hire a lawyer, and get an injunction against the threatened circulation of his love letters.

Not only in the sordid case of Reggie versus Pansy, but in most instances of correspondence, the courts have held for over two hundred years that ownership of letters consists of two separate rights, the right to the physical manuscript and the right of publication. The former belongs to the recipient or addressee, the latter is reserved to the writer.

The same rules apply, regardless of whether the communication be weighty or trivial, artistic or news of the family, confidential or repeatable. The many attempts to modify the basic rules by making distinctions along the foregoing lines have been rejected by judges.

Strange as it may seem, even publishers and their attorneys have been known to suffer through ignorance of the well-established legal doctrine. A striking instance of such unawareness is reported by Mr. George H. Doran in his colorful memoirs, published a few years ago under the title, "Chronicles of Barabbas." With candor un-

usual in a person guilty of a howler the publisher tells the story on himself. It concerns his purchase of an intimate series of letters written by Woodrow Wilson to a friend, Mrs. Peck.

I was convinced, Mr. Doran reports in his "Chronicles of Barabbas," of the authenticity and real quality of these letters and was eager to publish them, just as I would eagerly publish the letters of any great man. I submitted the manuscript to my legal counsel and was told that I was quite without legal rights in concluding a contract and proceeding with publication. The contract was drawn. The sum involved was quite a substantial amount and I agreed to pay \$10,000 on the signing of the agreement. We were to have custody of the original letters for a period of two years following the publication of the book. Everything seemed to be in order, the money was paid, and we had in our possession the working manuscript and the letters themselves.

Then fell the blow. One morning very early my attorney called on the telephone at my home and said he must see me at the earliest possible moment. We met at his office at nine that morning. There he showed me a citation from an old English law dating back to the seventeen-hundreds but which by usage and practice had become, as so many other laws had become, an integral part of American jurisprudence. Briefly, the citation was to the effect that, while the actual piece of paper containing a message was the property of the recipient, the thought contained in the message remained for ever the property of its writer or his heirs. Consequently we had no moral right to print these letters without the consent of their writer and obviously such consent was impossible. Here was a serious predicament, for we were under contract to publish. However, after much negotiation the contract was cancelled by our

forfeiting the \$10,000 paid on account of the contract. A sad and expensive lesson in law, for it did appear most strange to me that the possessor of letters had no property rights in their contents. Probably I should have known this years before, but the question had never arisen in my experience and my legal counsel, an eminent attorney, had no greater knowledge than I.

Curious, indeed, that this was the first time the question had arisen, since, on a smaller scale, any submitted manuscript which includes even a single letter should be notice of possible trouble to a publisher, unless he first receives leave to print from the writer of the letter.

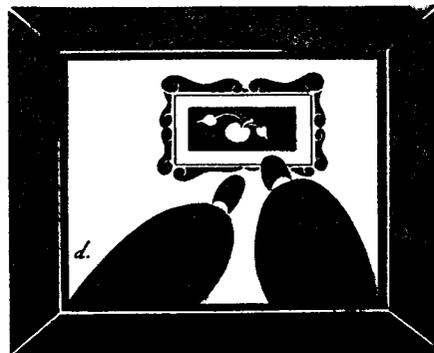
PERHAPS the earliest case of this sort involved Alexander Pope, the poet, who sued to prevent one Curl, a bookseller, from circulating a volume containing some of his letters. It was argued, in the year 1741, in the English Court of Chancery. Curl contended that when a man writes a letter it is in the nature of a gift to the receiver. But Hardwicke, the Lord Chancellor, disagreed, laying down the groundwork for the law as it exists to this day not only in England but in the United States.

"I am of the opinion," he announced, "that it is only a special property in the receiver, possibly the property of the paper may belong to him; but this does not give a license to any person whatsoever to publish them to the world, for at most the receiver has only a joint property with the writer."

Curl further urged that since the letters were "on familiar subjects and inquiries after the health of friends," they could not properly be called a learned work.

This contention stirred Hardwicke to a piece of literary criticism: "It is certain that no works have done more service to mankind than those which have appeared on familiar subjects, and which perhaps were never intended to be published; and it is this that makes them so valuable; for I must confess, for my own part, that letters which are very elaborately written, and originally intended for the press, are generally the most insignificant and very little worth any person's reading."

A generation later came the celebrated case of Sir Charles Thompson, executor of Lord Chesterfield, against the widow of Chesterfield's son. It dealt with the famous correspondence from father to son, especially on the subjects of education and proper personal behavior. In preventing their use the court extended the ruling of Lord Hardwicke by holding that publishing rights belonged not only to the



original writer, but on his death, to his estate.

In 1804 the children of the poet Burns were equally successful.

A new theory on which to escape the decisions was presented to the English Chancery Court in 1818. A Mrs. Gee had written many letters of affection to William Pritchard, the bastard son of her late husband. It seems that later Mrs. Gee, finding that Pritchard has been unworthy of her sentiments, publicly repudiated him—and them. Pritchard then set out to publish these early letters, claiming the right and need to vindicate his reputation. But the court held against him and in favor of Mrs. Gee.

The same plea, but with a different twist, and with the same result, was advanced in 1884 in another noteworthy litigation. Bulwer-Lytton, the elder, during a marriage terminating in divorce back in 1836, had corresponded happily with his then wife. After his death, his son wrote his biography, in the course of which he dealt with the marriage. A Miss Devey, as executrix of Lady Lytton's estate, claiming that the biography ascribed to her friend harsh and unfeminine conduct, attempted to publish the early letters from husband to wife in order to correct the son's picture. While the court conceived of a situation where the need of making such defense might let down the bars, it declared there was no reason for the exception in the case presented. So the younger Lytton prevailed in keeping his father's letters from the public eye.

ANOTHER literary case centered around the painter Whistler, whose estate brought an equity suit against Joseph and Elizabeth Robins Pennell. Although creating great public furor, it ended in something of an anti-climax. The Pennells had been authorized by Whistler, it appeared, to write his life. In the course of their labors they naturally had had access to Whistler's correspondence with various persons. It was this correspondence that Whistler's executor wished to keep out of the biography. The Pennells disclaimed any intention of



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printing it. They insisted, however, and the court was inclined to agree, that they had the right to consider the material and to make fair use of it, incidental to the portrayal of their subject.

The courts of this country have been fairly consistent in following the English doctrine of divided ownership. The earliest American case seems to have been decided by a Louisiana Court in 1811, where a single unimportant letter was involved. A great Justice Story, in the historic case of Folsom against Marsh, adhered to the English precedents. That case dealt with a mass of letters by George Washington which had appeared in Jared Sparks's "Life," and which a rival publication sought to utilize. It was Story who termed the use of letters by the recipient:

One of the most odious breaches of private confidence, of social duty, and of honorable feelings which can well be imagined. It strikes at the root of that free interchange of advice, opinions, and sentiments, which seems essential to the well-being of society, and may involve whole families in great distress from the public display of facts and circumstances which were reposed in the bosom of others, in the fullest and most affecting confidence that they should forever remain inviolable secrets.

Few cases of prominence have appeared in the courts of this country. In fact, it was not until 1912 that the question arose in Massachusetts. The case, which was brought by the executors of the estate of Mary Baker G. Eddy, caused Chief Justice Rugg to hand down an opinion covering the history of the doctrine from the earliest days, restating it, and reconciling possible conflicts in exceptional decisions. The opinion of Justice Rugg is comprehensive and probably represents more completely than any other the present state of American law on the subject. The suit was for an injunction against the use of a number of letters, written by Mrs. Eddy to a female cousin just after the first publication of "Science and Health" in 1875. The defendants, a firm of auctioneers, were advertising these letters and other manuscripts in their catalogue, in which some of the letters had already appeared. They claimed that the letters, dealing merely with business and family affairs, were free for anyone to publish, since they had no literary quality. The court, however, unanimously granted the injunction, at the same time adverting to the nature of the rights involved and the reasons for the historic judicial view. In protecting the privacy of the writer, the court quoted Lord Campbell, who had said in a similar case:



That is a recognition of property in the writer, although he has parted with the manuscript; since he wrote to enable his correspondent to know his sentiments, not to give them to the world.

THE Massachusetts court further approved of the statements by a New York court and by Justice Story that it mattered not whether the letters were literary compositions, familiar letters, or those dealing with business; that it wasn't for the court to assume the role of literary critic and pass on the worth of a letter as a piece of art.

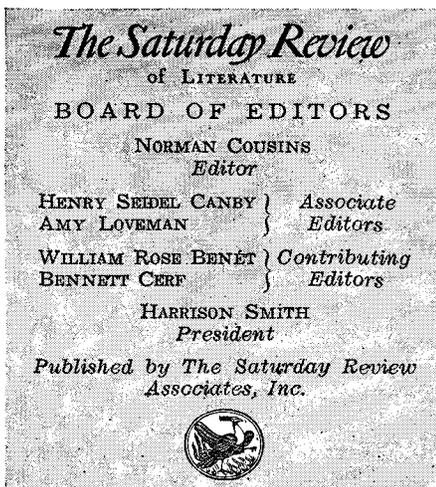
Justice Rugg continued:

The same conclusion is reached on principle and apart from authority. It is generally recognized that one has a right to the fruits of his labor. This is equally true, whether the work be muscular or mental or both combined. . . . The labor of composing letters for private and familiar correspondence may be trifling, or it may be severe, but it is none the less the result of an expenditure of thought and time. The market-value of such an effort may be measured by the opinions of others, but the fact of property is not created thereby. A canvas upon which an obscure or unskilful painter has toiled does not cease to be property because by conventional standards it is valueless as a work of art. Few products of the intellectual reveal individual characteristics more surely than familiar correspondence, entries in diaries, or other unambitious writings.

The conclusions thus reached are not based primarily on copyright statutes but on common-law rights of literary property. The net result of the various decisions may be summarized as follows:

The recipient of a letter owns the material paper; this he may sell, as any other article, or he may destroy it or keep it. The right of publication, however, remains in the sender and on his death passes to his estate or heirs. To the foregoing rules there are a few minor exceptions which need not concern us here. It is enough for us to understand in general the curious two-fold aspect of epistolary ownership.

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PRIMING EDUCATION FOR THE JOB AHEAD

IT could be said today, with close approximation to truth, that in the midst of war we are in peace. For post-war planning has taken on so official a character, and in some of its aspects is approaching so close to concrete problems, that though no exact diagram for the future is as yet a possibility, nevertheless the signposts for tomorrow already point in various directions.

Perhaps nowhere more than in the field of education are there auguries of change to come. Military training, with its speed-up and intensification of study; the war, with its spectacular evidence to the resourcefulness, adaptability, and ingenuity of American youth; science, through the amplification and application of recent discoveries opening up new fields of technical opportunity, have pretty well persuaded the public mind that after the struggle is over there will have to be a stock-taking of present educational methods and radical departure in many ways from hitherto accepted practice and theory. Already our young people are at unease in Zion. Those still in our schools and colleges, too young to bear arms but old enough to be vitally interested in the titanesque rending of the world they have known, chafe under a mental discipline which in many ways they feel has become outmoded. On the one hand they have been made keenly aware through the priorities of military organization of the advantages that accrue to the man of education; on the other they have come to distrust the education that is being dispensed to them as cluttered up with antiquated shibboleths and methods. They are accustomed to assuming a sceptical and questioning attitude, for they were born into a world which had lost its complacency and grew up in a period of stress and strain which was bitterly taking stock of its own mistakes. These young people who are the heirs of war and false prosperity and

depression are indeed in a peculiar position, for, the inheritors of the disaster of one conflict and its postlude, they are at the same time participants in the aroused idealism of another.

Here they are, the most malleable, the most impressionable stuff in the world, about to be thrown with their elder brothers and sisters who have known at first hand the scarifying experience of war into the chaos of affairs which will be largely dependent for their ordering on the wisdom and knowledge with which the young approach them. For it is they who in the long run will have to shape the new world. What are we going to do about them, these boys and girls in the service or shortly to enter into it?

Well, for one thing, if the President's message of October 27 to Congress is of any avail, to "make it financially feasible for every man and woman who has served honorably for a minimum period in the armed force since September 16, 1940, to spend up to one calendar year in a school, college, a technical institution, or in actual training in industry, so that he can further his education, learn a trade, or acquire the necessary knowledge and skill for farming, commerce, manufacturing, or other pursuits." And for another, "make it financially possible for a limited number of ex-service men and women selected for their special aptitudes, to carry on their general, technical, or professional education for a further period of one, two, or three years." This is a noble project, pregnant with enormous possibilities of usefulness if it be realized that by the time the conflict is over millions of men will have been under arms and that each man who adds stature to his own capabilities by so much raises the level of the entire community. It

is a project which should arouse the liveliest interest in the public mind and which it is none too soon to begin to discuss in its every aspect.

For to develop such a project to its fullest good will be no easy matter. It still remains true that learning is a slow process, and that for the many what the extended period of schooling will give will be a mere veneer on illiteracy, or ignorance, or scanty knowledge. But it will have the enormous advantage of being addressed to minds matured by experience, to skills developed by stringent circumstances, to a receptivity fertilized by knowledge of a horror which must by all means be prevented from recurrence.

In the holocaust of war boys have been forged into men. It is inconceivable that the kind of education they return to can be a mere continuation of what they left. These are men who have been faced with primal things and have had time to think, who, confronted with death, have doubtless tried to measure life, and who will return to the ways of peace still fired by the heroic effort they have made. But they will return infinitely weary, too, ready to slip into lassitude if the home front is lax. Now before they come back is the time for educators and laymen interested in education to take counsel as to what can be done to stimulate and uphold them, to turn their receptivity into eagerness, to indoctrinate them in techniques and methods and ideals which will bind them together for a world of internationalism and peace. It must be done or a super-legion of some sort will indoctrinate them in pressure politics for sectional ends or factional disputes. It must be done if we are to have a united nation and a sane world. It must be done, and public discussion as to how cannot begin too soon. A. L.

Boy Rescued from a Rubber Raft

By Virginia Sorensen

WE were a people notably precise,
And always traveled with a balanced load,
Inquired the condition of the road,
Knew in advance the day was bad or nice.
We were a people notably precise,
We always planned with care the smallest hop.
At places where we were obliged to stop
We knew the accommodations and the price.

Precision is still somewhere, cool as ice:
"Be sure to send a map" (that's what they said)
"Be sure to mark just where you are, in red."
We were a people notably precise.
How will they come to know, how understand?
What swinging sea is this, oh God, what land?